(17,306.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 218.

GEORGE H. EARLE, JR., RECEIVER OF THE CHESTNUT STREET NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA, AT THE SUGGESTION AND TO THE USE OF THE COMMONWEALTH TITLE, INSURANCE AND TRUST COMPANY, TRUSTEE FOR MARY RODGERS UNDER THE WILL OF BENJAMIN MILNES, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

INDEX.

	Origina.	Print.
Petition for writ of error	1	1
Order of Justice Shiras allowing writ of error	6	4
Writ of error	7	4
Citation (copy)	9	5
Bond on writ of error	10	6
Caption	14	8
Docket entries	14	8
Appeal and affidavit	15	9
Præcipe for certiorari	16	10
Record from court of common pleas	17	10
Docket entries	18	11
Præcipe for summons	21	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 17, 1899.

	Original.	Print.
Summons	21	13
Sheriff's return	22	13
Plaintiff's statement of claim	[illegible]	13
Exhibit A—Will of Benjamin Milnes	27	16
Suggestion of defense	35	19
Rule for judgment	35	20
Assessment of damages	36	20
Præcipe for attachment	37	21
Præcipe for *fi. fa.*	37	21
Attachment	38	22
Sheriff's return	40	23
Fieri facias	41	24
Sheriff's return	43	24
Appearance for Eighth national bank	43	24
Girard national bank	43	25
Fourth Street national bank	44	25
Union Trust Co	45	25
Huntingdon and Broad Top Mt. R. R. and Coal Co	45	26
Merchants' national bank	46	26
Plea of Union Trust Co	46	27
Præcipe for alias attachment	47	27
Alias attachment	47	27
Sheriff's return	49	28
Appearance for Mr. Simpson McCullough	49	29
Interrogatories to H. & B. T. M. R. R. & Coal Co	50	29
Fourth Street national bank	53	30
Girard national bank	56	32
Eighth national bank	58	33
Union Trust Co	61	35
Merchants' national bank	64	36
Answers to interrogatories by Fourth Street national bank	67	38
Merchants' national bank	68	38
Union Trust Co	71	40
Eighth national bank	73	41
Further answers to interrogatories by Eighth national bank	75	42
Rule for judgment against Eighth national bank	77	43
Answers to interrogatories by H. & B. T. M. R. R. & Coal Co	78	44
Interrogatories to Chestnut Street national bank	80	45
Answers to interrogatories by Girard national bank	83	46
Chestnut Street national bank	84	47
Sci. fa. surbill of discovery	90	50
Sheriff's return	91	50
Bill of discovery	92	51
Interrogatories to James Long	97	53
Appearance for Olive Long	103	56
Rule for judgment against Chestnut Street national bank	104	56
Answer of James Long to bill	104	57
Answers of James Long to interrogatories	109	59
Appearance for Geo. H. Earle, Jr., receiver	119	63
Suggestion of appointment of Geo. H. Earle, Jr., as receiver	120	64
Motion to dismiss attachment against Chestnut Street national bank	121	64

	Original	Print.
Affidavit of Geo. H. Earle, Jr	122	65
Order and judgment against Chestnut Street national bank	124	66
Opinion	126	67
Præcipe for *fi. fa.* to sell interest of James Long in stock in hands of garnishees	131	69
Writ of certiorari	131	69
Return to writ of certiorari	133	70
Assignment of errors	134	70
Judgment and opinion	135	71
Clerk's certificate to opinion	136	71
Clerk's certificate to record	137	72
Chief justice's certificate	138	72
Clerk's certificate	138	72
Citation and service	139	73

1 To the honorable the Supreme Court of the United States:

The petition of George H. Earle, Jr., as receiver of the Chestnut Street National Bank, respectfully showeth that your petitioner brought an action into the supreme court of Pennsylvania for the eastern district of Pennsylvania to January term, 1898, No. 222, by writ of certiorari to an appeal from a judgment of the court of common pleas of Philadelphia county, No. 4, of June term, 1897, No. 604, in which action in said supreme court your petitioner was appellant and defendant (garnishee) in the said court of common pleas and The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, was appellee in said supreme court and plaintiff in said court of common pleas.

That the said action in the said court of common pleas was one in which said plaintiff in said court of common pleas sued one James Long upon a bond in assumpsit, and in which, on September 29, 1897, a judgment was entered against said James Long and damages assessed at $31,499; that said plaintiff in said court of common pleas afterward caused to be issued by said court of common pleas and returnable to it a writ of attachment surjudgment, and on October 5, 1897, an alias writ of attachment surjudgment issued, which alias writ was served upon said The Chestnut Street National Bank of Philadelphia (a banking association incorporated, organized, and transacting business under the act of Congress known as the "national bank act" and laws of the United States) at 11.35 a. m. on October 28, 1897, as garnishee, commanding the said The Chestnut Street National Bank to be and appear before said court of common pleas, at Philadelphia, on the first Monday of November, 1897, to show, if anything it, the said garnishee, have to say, why the said judgment against said James Long, besides costs of suit, should not be levied of the effects of the said defendant in the hands of the said garnishee; that afterward, on November 6, 1897, special interrogatories were filed by the plaintiff in said court of common pleas in the attachment proceedings against said The Chestnut Street National Bank, and a rule was entered by said plaintiff requiring the said The Chestnut Street National Bank, garnishee, "to answer same within twenty days or judgment *sec. reg.*;" that afterward, on

2 November 24, 1897, the said The Chestnut Street National Bank did file its written answer in said proceedings in attachment as garnishee; that afterward, on December 15, 1897, a rule was entered by said plaintiff in said court of common pleas for judgment against the said The Chestnut Street National Bank, garnishee, on its answer, that afterward, on December 23, 1897, the said The Chestnut Street National Bank suspended payment of its obligations, and by order of the Comptroller of the Currency of the United States closed its doors for business; that afterward, on January 29, 1898, said George H. Earle, Jr., was duly appointed by the Comptroller of the Currency of the United States as receiver of said bank, and duly

qualified as such; that afterward, on May 5, 1898, said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, garnishee aforesaid, entered his appearance in said action in said court of common pleas, and on the same day filed a suggestion of record, setting forth that he had been duly appointed by said Comptroller of the Currency receiver of said bank and had duly qualified as such, and on the following day, May 6, 1898, said George H. Earle, Jr., filed in such action in said court of common pleas an affidavit setting forth the fact of his appointment as receiver, as aforesaid; that afterward, on May 7, 1898, a motion was made and filed (entered as a rule) by said receiver to vacate and dismiss the attachment served upon and against the said The Chestnut Street National Bank, garnishee, for want of jurisdiction of the said court of common pleas under section 5242 of the Revised Statutes of the United States, maintaining that all the proceedings in attachment had in said action in said court of common pleas against said The Chestnut Street National Bank were and are null and void.

That the said court of common pleas of Philadelphia county heard argument on the rule entered December 15, 1898, by plaintiff for judgment against the said The Chestnut Street National Bank, and upon the motion of the said George H. Earle, Jr., its receiver (taken by the court as a rule), filed May 7, 1898, to vacate and dismiss the attachment for want of jurisdiction, as aforesaid, and rendered judgment agaist your petitioner on May 21, 1898, and on the same day an opinion in writing by Honorable Michael Arnold, president judge of said court of common pleas, No. 4, of Philadelphia, was filed, and that by said judgment of said common pleas court the rule for judgment on the answer of said The Chestnut Street National Bank, garnishee, entered by said plaintiff was made absolute and judgment entered accordingly on May 21, 1898, by which said judgment
3 said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, was ordered to pay the sum of $2,900 to said plaintiff (being the amount of a clearing-house due bill, payable to the order of said James Long, issued by said bank and outstanding at the time of the service of the writ of attachment, and which said clearing-house due bill was duly paid by said bank, but after service of said attachment), and plaintiff was also given leave to issue and did issue a writ of *fieri facias* for the sale of certain securities in the hands of said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, and to which he held title and ownership and which were collateral to a certain demand note owned and held by said receiver, made by said James Long; and your petitioner says that by said judgment the motion or rule entered by said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, to vacate and dismiss the proceedings in attachment against said bank and himself in said action for want of jurisdiction of said common pleas court under section 5242 of the Revised Statutes of the United States was discharged, and that said judgment discharging said rule was against the title, right, privilege, exemption, and exception specially set up and claimed under such statute of the United States by your petitioner, to his great damage.

That on the 30th day of January, 1899, the supreme court of Pennsylvania, sitting at Philadelphia, ordered said judgment of the court of common pleas aforesaid to be affirmed, and afterward, on the 30th day of January, 1899, the said judgment was duly entered and recorded in the eastern district of Pennsylvania aforesaid upon the records of said supreme court.

That the said judgment of the supreme court of Pennsylvania is a judgment of the highest court of record of the State of Pennsylvania.

That the judgment of the said supreme court of Pennsylvania is final.

That the right, title, privilege, immunity, exemption, and exception claimed by your petitioner, defendant and garnishee and appellant aforesaid, was claimed upon his own behalf and for his own benefit as such receiver under section 5242 of the Revised Statutes of the United States, in force at the time the writ of attachment complained of was issued against said The Chestnut Street National Bank by the court of common pleas of Philadelphia county, and the judgment of which court against your petitioner in this regard has
4 been affirmed by said supreme court of Pennsylvania, as aforesaid. The said section 5242 of the Revised Statutes of the United States is in words as follows:

"SEC. 5242. All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void. No attachment, injunction, or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county, or municipal court."

That the decision and judgment of the supreme court of Pennsylvania aforesaid was against the right, title, privilege, immunity, exemption, and exception so claimed by and for the benefit and use of your petitioner.

That the said court of common pleas of Philadelphia and the supreme court of Pennsylvania have and had no jurisdiction over the subject-matter or controversy, but that the jurisdiction is by the said statute laws of the United States (section 5242, Revised Statutes) wholly forbidden and prohibited, and therefore the said proceedings in attachment and judgment aforesaid are null and void and contrary to the statute laws of the United States in the premises.

Your petitioner therefore prays for the allowance of a writ of error to the supreme court of Pennsylvania in order that the said judgment of the supreme court of Pennsylvania may be re-

examined and reversed or affirmed in the Supreme Court of the United States.

And he will ever pray.

GEORGE H. EARLE, JR.,
As Receiver of the Chestnut Street National Bank.

5 STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

George H. Earle, Jr., being duly affirmed according to law, declares and says that he was appointed receiver of the said The Chestnut Street national bank on or about January 29, 1898, by the Comptroller of the Currency of the United States, and that the facts in the above petition stated are true to the best of his knowledge, information, and belief.

GEORGE H. EARLE, JR.

Affirmed and subscribed before me this sixth day of February, A. D. 1899.

[Seal of Wm. H. G. Gould, Notary Public, Philadelphia, Pa.]

WM. H. G. GOULD,
Notary Public.

I will accept service of citation to the Supreme Court of the U. S. in above case.

ALFRED D. WILER,
Att'y for Commonwealth T., I. & T. Co., Use Pl'ffs.

2, 6, '99.

6 [Endorsed:] In the Supreme Court of the United States. George H. Earle, Jr., as receiver of the Chestnut Street national bank, petitioner in error, *vs.* The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance & Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased. Petition for writ of error. And now, to wit, this 8th day of February, 1899, citation awarded and writ of error allowed by me, George Shiras, Jr., associate justice of the Supreme Court of the United States. Asa W. Waters, W. H. Addicks, attorneys for petitioner.

7 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit

between George H. Earle, Jr., receiver of the Chestnut Street national bank, appellant, and The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, appellee, No. 222, January term, 1898, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was
8 in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
GEORGE SHIRAS, Jr.,
Associate Justice of the Supreme Court of the United States.

9 *Copy of Citation.*

UNITED STATES OF AMERICA, *ss:*

To the Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's

office of the supreme court of the State of Pennsylvania, wherein George H. Earle, Jr., receiver of the Chestnut Street national bank, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 8th day of February, in the year of our Lord one thousand eight hundred and ninety-nin

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

Service of above citation, on February 9, 1899, is admitted and accepted.

ALFRED D. WILER,
Att'y for Commonwealth of Pennsylvania, to Use, &c.

10 *Bond Surwrit of Error to the Supreme Court of the United States.*

In the Supreme Court of Pennsylvania in and for the Eastern District of Pennsylvania.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title, Insurance and Trust Company, Trustees for Mary Rodgers under the Will of Benjamin Milnes, Deceased, Appellee, *vs.* (JAMES LONG, Defendant, and) GEORGE H. Earle, Jr., as Receiver of the Chestnut Street National Bank, Garnishee, Appellant.	No. 222, January Term, 1898.

Know all men by these presents that we, George H. Earle, Jr., as receiver of the Chestnut Street national bank, and the Finance Company of Pennsylvania, are held and firmly bound unto the Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, in the full and just sum of seventy-five hundred dollars ($7,500), to be paid to the said The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, its certain attorney or attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

11 Sealed with our seals and dated this eighth day of February, 1899.

Whereas lately, at a term of the supreme court of Pennsylvania in and for the eastern district of Pennsylvania, in a suit depending

on said court between George H. Earle, Jr., as receiver of the Chestnut Street national bank, appellant, and The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, appellee, judgment was rendered against the said George H. Earle, Jr., as receiver of the Chestnut Street national bank, and the said appellant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustees for Mary Rodgers under the will of Benjamin Milnes, deceased, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said George H. Earle, Jr., as receiver of the Chestnut Street
12 national bank, appellant in said Supreme Court of the United States, shall prosecute his writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

GEORGE H. EARLE, JR.,
As Receiver of the Chestnut Street National Bank. [SEAL.]
THE FINANCE CO. OF PENNSYLVANIA,
By C. WILLIAM FUNK, *Sec'y.* [SEAL.]

Sealed and delivered in the presence of—
SIMON A. STERN.

I approve of the above bond on behalf of the Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased.

ALFRED D. WILER,
Att'y for Commonwealth Title Ins. & T. Co., Trustees, Use Plaintiffs.

2, 6, '98.

The above bond approved this 8th day of February, 1899.
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Ct. of the U. S.

Endorsement: 222, January term, 1898. Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, *vs.* James Long,
13 defendant, and The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of Chestnut Street national

bank. Appeal of Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of the Chestnut Street national bank. Filed Feb. 9, 1899, in supreme court of Penna., E. D. Bond sur-appeal to the Supreme Court of the United States.

I hereby certify that the above is a true and correct copy of the bond filed in above-entitled case.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this 9th day of February, A. D. 1899.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

14 In the Supreme Court of Pennsylvania, Eastern District.

Among the records and proceedings of the supreme court of Pennsylvania in and for the eastern district, *inter alia*, the following may be found as matter of file and of record:

Appearance Docket.

No. 222, January Term, 1898.

Docket Entries.

	Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance & Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, plaintiff,	Appeal from the court of common pleas, No. 4, of the county of Philadelphia.
		Filed June 4, 1898.
222.	*v.*	*Eo die*, certiorari exit, ret'ble the first Monday of January, 1899.
Asa W. Waters. W. H. Addicks.	James Long, defendant, and The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of the Chestnut Street National Bank (appellants), defendants.	June 28, 1898, record returned and filed. January 2, 1899, assignments of error filed. January 17, 1899, argued. January 30, 1899, judgment affirmed *per curiam* (S.).
	Appeal of the garnishee and of the receiver.	February 9, 1899, petition and copy of petition for writ of error to the Supreme Court of the U. S. brought into office.
	C. P., No. 604, June T., 1897.	*Eo die*, writ of error, with copy of same, brought into office. *Eo die*, citation, with service, admitted and accepted by Alfred D. Wiler, Esq., att'y for Commonwealth of Penna., brought into office. *Eo die*, bond in $7,500 filed.

15 *Certificate.*

I hereby certify that the above and foregoing is a true and correct copy of the docket entries in the above-entitled case so full and entire as appears of record in our said supreme court.

In testimony whereof I have hereunto set my hand and seal of said court, at Philadelphia, this 8th day of February, A. D. 1899.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

Appeal and Affidavit.

In the Supreme Court of Pennsylvania for the Eastern District.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased, Plaintiff, *vs.* JAMES LONG, Defendant, and THE Chestnut Street National Bank, Garnishee, and George H. Earle, Jr., Receiver of the Chestnut Street National Bank (Appellants), Defendants.	Court of Common Pleas, No. 4, of the County of Philadelphia, June Term, 1897. No. 604.

Enter appeal on behalf of the Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of Chestnut Street national bank, for judgment against the Chestnut Street National Bank, garnishee, of the court of common pleas, No. 4, of the county of Philadelphia.

ASA W. WATERS,
W. H. ADDICKS,
Att'ys for Appellants.

16 To Charles S. Greene, proth'y sup. ct., E. D.

COUNTY OF PHILADELPHIA, *ss:*

George H. Earle, Jr., receiver as aforesaid, being duly affirmed, saith that said appeal is not taken for the purpose of delay, but because appellants believe they have suffered injustice by the judgment against the Chestnut Street National Bank, garnishee, from which they appeal.

GEORGE H. EARLE, JR.

Affirmed and subscribed this 3rd day June, A. D. 1898.

H. F. REARDON,
[SEAL.] *Notary Public.*

Endorsement: No. 222, January term, 1898, supreme court of Pennsylvania, eastern district. Com'th *ex rel.* Com'th Title Ins. Co., trustee, etc., *v.* James Long *et al.*; Chestnut Street National Bank, etc., *et al.*, appellants. Appeal and affidavit. Filed Jun- 4, 1898, in supreme court. Asa W. Waters, W. H. Addicks.

Præcipe for Certiorari.

In the Supreme Court of Pennsylvania for the Eastern District.

The CHESTNUT STREET NATIONAL BANK, Garnishee, and GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Appellants.

Certiorari to the court of common pleas, No. 4, of the county of Philadelphia, of June term, 1897. No. 604.

17 Issue certiorari to the court of common pleas, No. 4, of the county of Philadelphia to bring up record and proceedings in a certain action in said court, No. 4, June term, 1897, wherein Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benj. Milnes, dec'd, plaintiff, and James Long and The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of said Chestnut Street national bank, defendant-.

Returnable to next term, *sec. reg.*

ASA W. WATERS,
W. H. ADDICKS,
Attorneys for Appellants.

To Charles S. Greene, proth'y sup. court, E. D.

Endorsement: No. 222, January term, 1898, supreme court of Pennsylvania, eastern district. Com'th *ex rel.* Com'th Title Ins. Co., trustee, etc., *vs.* James Long *et al.*; Chestnut Street Nat'l Bank, etc., *et al.*, appellants. Præcipe for certiorari. Asa W. Waters, W. H. Addicks.

Exemplification.

PHILADELPHIA COUNTY, } *sct:*
State of Pennsylvania, }

Among the records and proceedings of the court of common pleas, No. four, for the county of Philadelphia, State of
18 Pennsylvania, the following may be found as matter of file and of record at No. 604, June term, 1897, to wit:

Docket Entries.

June Term, 1897.

Wiler & Crawford.
Loughlin & Dallas.

604.

The Commonwealth of Penna., at the suggestion and to the use of the Commonwealth Title Ins. & Trust Co., trustee for Mary Rodgers under the will of Benjamin Milnes, dec'd,
vs.
James Long.

Sums. assumpsit exit July 24, 1897.
Ret. 1 Mon., Aug., 1897.
Served.

Frank W. Paul, for Huntg. & Broad Top Mt. R. & Coal Co., garn.
Oct. 1, '97.

July 24, 1897, statement of claim filed.

Sept. 1, 1897, rule for judg't for want of a suff. aff't of defence.

Morgan & Lewis, for Girard Nat. Bank, gar.
Sept. 30, '97.

July 29, 1897, aff't of service of copy of statement on July 26, '97, filed.

Sept. 27, 1897, rule absolute.

R. C. Dale, for 4th St. Nat. Bk., garn.
Sept. 30, '97.

Aug. 5, 1897, suggestion of defence filed.

Sept. 29, 1897, dams. ass'd, $31,499.00.

John Roberts, for 8th Nat. Bank, gar.
Sept. 30, '97.

Sept. 29, 1897, att. surjudg't *vs.* Union Trust Company, Merchants' National Bank, Girard National Bank, Eighth National Bank, Fourth Street National Bank, Huntingdon & Broad Top Railroad, Niagara Mining & Smelting Co., James Long, Bro. & Co., M. Simpson Mc Cullough, garnishees, exit.

Sept. 29, 1897, *fi. fa.* exit.

Metzger, for Union Trust Co., garn.
Oct. 1, '97.

Ret. 1 Mon., Oct., 1897.

Ret. 1 Monday, Oct., 1897, *nulla bona.*

Henry T. Dechert, for Merchants' Nat. Bk., gar.
Oct. 1, '97.

Attached as commanded and made known to gars. as follows: Girard Nat. Bank, Fourth St. Nat. Bk., 8th Nat. Bk, Jas. Long, Bro. & Co., Huntingdon & Broad Top Mt. R. R. & Coal Co., & Niagara & Smelting Co., & *nihil habet* as — M. Simpson McCullough, garn., & James Long, def't.

Oct. 27, 1897, rule for judgment against 8th Nat. Bank, garnishees, for the amount admitted to be due.

19 Bispham, for M. S. McCullough, gar.
Oct. 8, '97.

Oct. 5, 1897, att. surjudg't *vs.* M. Simpson McCullough, garnishee, exit.

Oct. 30, 1897, rule withdrawn.

J. H. Taulane, for Olive Long.
Dec. 27, '97.

Ret. 1 Mon., Nov., 1897.

Dec. 15, 1897, rule for judg't against Chest. St. Nat. Bank, garnishees, on answers filed.

Addicks & Waters, for receivers of Chest. St. Nat. Bk., gar.
May 5, '98.

Att. as commanded and made known to garn., & *nihil habet* as to def't.

Oct. 19, 1897, special interrogatories & rule to answer on the following garnishees, viz:

May 21, 1898, rule absolute—see findings—filed.

Eo die, opinion by Arnold, P. J., filed.

May 5, 1898, suggestion of record that Geo. H. Earle, Jr., Esq., has been duly appointed by the Comptroller of the Currency as receiver for the Chestnut St. Nat. Bank of Phila., garn., filed.

May 7, 1898, motion to vacate and dismiss attachment filed.

May 21, 1898, motion to vacate and dismiss attachment discharged.

May 24, 1898, findings ag'st Chestnut St. Nat. Bk. filed.

May 27, 1898, *fi. fa. vs.* defendant to sell right, title, and interest in 77 shares National Gas Trust stock and 33 shares capital stock of Eighth national bank, subject to claim of Chestnut Street National Bank, garnishee, of $17,831 and interest thereon, exit.

Ret. 1 Monday, June, 1898.

Huntingdon & Broad Top Mountain R. R. & Coal Co., Merchants' National Bank, The Union Trust Co., 8th National Bank, Girard National Bank, 4th Street National Bank, filed.

Oct. 21, 1897, answer of Union Trust Co., gar., filed.

Oct. 22, 1897, answer of Merchants' Nat. Bank, gar., filed.

Oct. 22, 1897, answer of Fourth St. Nat. Bank, gar., filed.

Oct. 25, 1897, answer of 8th National Bank, gar., filed.

Oct. 28, 1898, supplemental answer of 8th Nat. Bank, gar., to 7th interrogatory filed.

Nov. 6, 1897, separate answers of Girard National Bank & Huntingdon & Broad Top R. R. and Coal Co., gars., filed.

20 Nov. 6, 1897, interrogatories and rule to answer to Chestnut St. Nat. Bank, gar., filed.

Nov. 24, 1897, answers of Chestnut St. Nat. Bank, garn., filed.

May 6, 1898, aff't of George H. Earle, Jr., filed.

June 4, 1898, certiorari from S. C. of Jan'y term, 1898.

No. 22, surappeal of the Chestnut St. National Bank bro't into office.

Eo die, appeal bond filed.

Jan. 31, 1898, answer of James Long filed.

Bill of discovery in aid of execution filed Dec. 7, 1897.

Dec. 7, 1897, *sci. fa.* allowed.

Exit, ret. 1 Mon., Jan'y, 1898, made known.

[SEAL.]

Certified from the record this 22nd day of June, A. D. 1898.

JOHN L. BURNS,
Pro Prothonotary.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustees for Mary Rodgers under the Will of Benjamin Milnes, Deceased,
21 *vs.*
JAMES LONG.

Common Pleas, No. —, June Term, 1897. No. —.

Issue summons in assumpsit ret. *sec. reg.*

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Att'y- for Pl'ff.

7, 24, '97.

To proth'y of common pleas.

Endorsement: 604, C. P., No. 4, June term, 1897. 304. Commonwealth of Pennsylvania, at suggestion and to the use of the Commonwealth Title Ins., &c., Co. *v.* James Long. Præcipe. Summons assumpsit. Filed Jul- 24, 1897. Hunter, prothonotary. A. D. Wiler, Crawford, Loughlin & Dallas.

Summons.

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that you summon James Long, late of your county, so that he be and appear before our judges at our court of common pleas, No. 4, of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of August next, there to answer Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, of a plea of assumpsit; and *to* have you then and there this writ.

22 Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, the 24th day of July, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

J. U. G. HUNTER,
Pro Prothonotary.

Endorsement: 604, June term, 1897, court of common pleas, No. 4. Commonwealth of Pennsylvania, at the suggestion of and to the use of Commonwealth Title Insurance and Trust Company, trustee, &c., *vs.* James Long. Summon assumpsit. Alfred D. Wiler, Crawford, Loughlin & Dallas.

Endorsement.

Served James Long by giving to him July 26, 1897, a true and attested copy of the within writ and making known to him the contents thereof.

So answers—

JOHN J. CURLEY, *Deputy Sheriff.*
ALEXANDER CROW, JR., *Sheriff.*

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased, *vs.* JAMES LONG.	C. P., No. 4, June Term, 1897. No. 604.

Plaintiff's Statement of Claim.

The Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, claim to recover from James Long, the defendant, the sum of

$30,148.18, together with lawful interest thereon, which is
23 justly due and owing by the said defendant to plaintiff as follows:

1. Benjamin Milnes died on April 11, 1861, having first made his last will and testament, dated February 9, 1861, and duly probated June 5, 1861, and registered in Will Book No. 46, page 12, &c., whereby he gave to William Milnes, in trust for his daughter, Mary Rodgers, the sum of twenty-five thousand dollars. In addition he also gave him, in trust for said Mary Rodgers after the death of his wife, Mary Milnes (who died May 3, 1880), one-third of twenty-five thousand dollars; also one-third of the proceed- of sale of house on Callowhill street east of Twelfth. A full copy of said will, showing the same, is attached hereto, marked Exhibit A.

2. That on the seventh day of September, A. D. 1895, John Milnes was by the orphans' court of Philadelphia county appointed trustee for said Mary Rodgers in place of William Milnes, deceased, and entered security in the sum of thirty-seven thousand dollars, the said defendant, James Long, being one of said sureties. A copy of the bond entered by him and on which this suit is brought is as follows:

Estate of MARY RODGERS under Will of Benjamin Milnes, Deceased.

Know all men by these presents that we, John Milnes, trustee of said estate; James Long, and Marcius S. Bulkley, are held and firmly bound unto *to* the Commonwealth of Pennsylvania in the
24 sum of thirty-seven thousand dollars, lawful money, to be paid said Commonwealth of Pennsylvania, their certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the 14th day of September, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas at an orphans' court for the county of Philadelphia, held the seventh day of September, in the year of our Lord one thousand eight hundred and seventy-five, surpetition, the court appointed the said John Milnes trustee of said estate in place of William Milnes, deceased, upon security being entered in the sum of $37,000:

Now, the condition of this obligation is such that if the above-bounden John Milnes shall faithfully perform his duties as such trustee and shall truly account for and faithfully appropriate the proceeds of the same agreeably to the provisions of the act of assembly in such case made and provided and according to the uses and trusts contained in the will of said decedent, then the said obligation to be void, or otherwise to be and remain in full force and virtue.

JOHN MILNES. [SEAL.]
JAMES LONG. [SEAL.]
M. S. BULKLEY. [SEAL.]

Sealed and delivered in the presence of—
WM. F. JOHNSON.
A. J. FORTIN.

3. That by virtue of his appointment as trustee said John Milnes received the sum of thirty-five thousand one hundred and four dollars and sixty-eight cents to hold as trustee for said Mary Rodgers under the terms of said will.

4. That said John Milnes departed this life on the twenty-eighth day of February, 1897, and on the twenty-third day of March, 1897, The Commonwealth Title Insurance and Trust Company (plaintiff herein) was by the orphans' court of Philadelphia county duly appointed trustee in place of said John Milnes, deceased, and duly entered security in sum of seventy thousand dollars.

5. The said John Milnes did not faithfully perform the duties of said trust, but, on the contrary, appropriated nearly all of said trust funds to his own use, to wit, the sum of thirty thousand one hundred and forty-eight dollars and eighteen cents ($30,148.18).

6. That the Equitable Trust Company was duly appointed administrator of the estate of said John Milnes, and as such filed his account as trustee, as aforesaid, in the orphans' court of Philadelphia county (April term, 1886, No. 433), and which was duly adjudicated by said court, the adjudication being filed June 30, 1897, and confirmed finally on July 17, 1897, said adjudication being as follows:

"Estate of BENJAMIN MILNES. April Term, 1886. No. 433.

Suraccount of John Milnes, trustee for Mary Rodgers under will of said testator, as stated by the Equitable Trust Company, administrator of John Milnes, deceased.

1897, June 28.—And now, the above account having been called for audit, Alfred D. Wiler and George L. Crawford, Esqs., appeared for the accountant; also for the Commonwealth Title Insurance and Trust Company, substituted trustees. The trust in this case arises under the will of Benjamin Milnes, deceased, dated the ninth day of February, 1861, whereby the said John Milnes received in trust for his sister, Mary Rodgers, a legacy of twenty-five thousand dollars, and after death of Mary Milnes, widow of testator, a further sum of ten thousand one hundred and four dollars and sixty-eight cents, to be held in trust for the said Mary Rodgers to pay her the income thereof during her life. It appeared from the evidence submitted to the auditing judge that there had been a devistavit of this estate; that there only came into the hands of this present accountant a bond and mortgage for the sum of five thousand dollars, given and executed by William A. Tyce to John Milnes, trustee, dated Sept., 1893; that all the rest of the principal of the trust estate, amounting to thirty thousand one hundred and four dollars and sixty-eight cents, had disappeared in the lifetime of John Milnes, as had also the balance of income, as shown by the account, amounting to forty-three dollars and fifty cents, and have never come into the hands of the present accountant.

The bond and mortgage of $5,000 above mentioned is awarded to the Commonwealth Title Insurance and Trust Company, substi-

tuted trustee, and the account is confirmed *nisi* on payment of clerk's costs.

JOS. C. FERGUSON, *J.*"

7. Plaintiff says that said John Milnes died insolvent and left no individual assets whatever.

8. Plaintiff claims to recover from said James Long by virtue of said bond the sum of thirty thousand one hundred and forty-eight dollars and eighteen cents, together with lawful interest thereon, being the amount of moneys of said trust estate appropriated by said John Milnes to his own use and for which defendant is liable.

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

EXHIBIT A.

I, Benjamin Milnes, of the city of Philadelphia, miner and merchant, mindful of the uncertainty of this life, and being
28 weak in body, but of sound mind and memory; thanks be to God for the same, have thought fit and proper to make, and hereby do make and publish this my last will and testament respecting my worldly goods and estate, hereby revoking all wills by me at any time heretofore made.

First. I commend my soul to God who gave it, and my body to the dust to be buried in a Christian-like manner.

Item. I do will order and direct that my funeral expenses and all other my just debts that I may owe if any at the time of my decease, be duly paid and satisfied as soon as conveniently can be after my decease.

Item. I do will devise and bequeath unto my beloved wife Mary Milnes for and during all the term of her natural life in case she should survive me, the house and lot of ground wherein I now reside, situate in the city of Philadelphia on the north side of Callowhill street east of Twelfth street, being numbered eleven hundred and twenty-seven; and from and immediately after the decease of my said wife, I do will devise and bequeath the said house and lot of ground to my three children, viz: William Milnes, Junior, John Milnes and Mary Rodgers (wife of James W. Rodgers, their heirs and assigns in full equal undivided third parts as tenants in common and not as joint tenants so as nevertheless that the one
29 full undivided third part of the proceeds of such one-third part thereof so devised by me to my said daughter Mary Rodgers (wife of said James W. Rodgers) shall be held by William Milnes (one of my executors hereinafter named) his heirs, executors and administrators in trust nevertheless to and for the same or like uses and to and for the only proper use and benefit of my daughter the said Mary Rodgers and her heirs as is hereinafter particularly mentioned and set forth.

Item. I do will order and direct that William Milnes (one of my executors hereinafter named) his heirs executors or administrators

shall set apart and invest the sum of twenty-five thousand dollars in the purchase of stocks, first bonds and mortgages and well secured ground rents in the city of Philadelphia and shall pay the rents interests issues incomes and dividends accruing thereon to my beloved wife Mary Milnes during all the term of her natural life, and from and immediately after her decease then the whole of said sum of twenty-five thousand dollars and all and every the arrears due for rents interest issues incomes and dividends, I do will order and direct to be equally divided between my said children William Milnes Junior, John Milnes and Mary Rodgers (wife of said James W. Rodgers) so as nevertheless that the share of my said daughter Mary Rodgers shall be held by William Milnes (one of my executors hereinafter named) his heirs executors and administrators in trust nevertheless to and for the same or like uses and to and for the only proper use and benefit of my daughter the said Mary Rodgers and her heirs as hereinafter particularly mentioned and set forth.

Item. I do will devise and bequeath to William Milnes (one of my executors hereinafter named) his heirs executors and administrators twenty-five thousand dollars in trust nevertheless to and for the following uses intents and purposes and to and for no other use intent or purpose whatever that it is my will and desire that the said William Milnes his heirs executors and administrators shall hold the same in trust for the only proper use and benefit of my daughter Mary Rodgers wife of James W. Rodgers during all the term of her natural life to pay to her the interest thereof, so that the same shall not be in any way or manner subject to the debts control or interference of her present or any future husband, and from and immediately after the decease of my said daughter Mary Rodgers she leaving a child or children her surviving in trust to pay the interest thereof for the support education and maintenance of such child or children until the youngest arrives to the age of twenty one years, if not of that age at the time of the decease of my said daughter then in trust to pay convey and assign the said principal to and among the child or children of my said daughter and the surviving issue of any child of my said daughter that may be then deceased share and share alike the issue of any such deceased child to take and receive only such part and share himself, herself between or among them as his her or their deceased parent if living would have had and taken and in case of the decease of my said daughter Mary Rodgers without leaving any issue of age or if leaving issue such issue die in their minority then the said Mary Rodgers shall have power to grant and convey said premises unto such person or persons and for such estate and estates as she the said Mary Rodgers by any instrument of writing in the nature of a will under her hand and seal executed in the presence of two or more subscribing witnesses shall direct limit and appoint.

Item. I do will devise and bequeath to my two sons William Milnes Junior and John Milnes their heirs and assigns absolutely share and share alike to hold to them the said William Milnes Junior and John Milnes and their heirs and assigns share and share

alike as tenants in common and not as joint tenants all my right title and interest in the firm of Benjamin Milnes and Company and in the firm of William Milnes Junior and Company, subject nevertheless to the payment of the sum of twenty-five thousand dollars with interest as hereinbefore willed and devised by me to William Milnes (one of my executors hereinafter named) in trust for the use of my said daughter Mary Rodgers and her heirs.

32 Item. I do will devise and bequeath to my said two sons William Milnes Junior, and John Milnes their heirs and assigns share and share alike all the rest residue and remainder of my estate real personal and mixed of whatsoever nature or kind and wheresoever situate to hold to them the said William Milnes Junior and John Milnes their heirs executors administrators and assigns forever share and share alike.

Item. I do hereby authorize and empower my executors or the survivor of them, his her or their executors or administrators at any time or times after my decease to sell and dispose of the whole or any part of my real estate (except my house and lot of ground number eleven hundred and twenty-seven Callowhill street) either at public or private sale for cash or on credit absolutely or reserving ground rent for the best price or prices that can be obtained therefor and to execute and acknowledge the requisite deed or deeds of conveyance for effectually granting and conveying the same to the purchaser or purchasers thereof his her or their heirs and assigns and for the sale assignment or extinguishment of any ground rents due or payable to me, or which may be reserved upon sales by them or either of them and in such manner that the premises conveyed or released shall be in the hands of such purchaser or purchasers free clear and discharged from all trusts whatsoever and so that there shall be no liability on the part of such pur-

33 chaser or purchasers to see to the application or misapplication of the purchase-money. And I do further authorize and empower my executors or the survivor of them or their legal representative to alter and change the investments of my said estate from time to time as they or the survivor of them may think best keeping nevertheless my said estate invested in securities of the same character as hereinbefore mentioned and to take all such measures to make execute acknowledge and deliver all such deeds conveyances assurances and papers for the purpose of fully effecting all the provisions of this my last will and testament as they or the survivor of them may think fit, all such reinvestments as may from time to time be made to be used held and kept for the purposes of this my will.

Lastly I nominate and appoint my beloved wife Mary Milnes and my brother William Milnes to be the executors of this my last will and testament.

In witness whereof, I the said testator Benjamin Milnes have hereunto set my hand and seal this ninth day of February in the year of our Lord one thousand eight hundred and sixty-one (1861).

BENJAMIN MILNES.

Signed, sealed, published, and declared by the said testator, Benjamin Milnes, as and for his last will and testament in the
34 presence of us, who, in his presence and in the presence of each other and at his request, have hereunto subscribed our names as witnesses the day and year aforesaid.

ORLANDO GRAY.
J. C. PAYNTER.
J. R. DEACON.

Edw'd H. Bonsall, being duly affirmed, doth say that he is the 2nd vice-president of the Commonwealth Title Insurance and Trust Company, and that the facts set forth in the foregoing statement of claim are true.

E. H. BONSALL.

Affirmed and subscribed before me this 24th day of July, 1897.

ANDREW T. KAY,
[SEAL.] *Notary Public.*

Endorsement: 604, C. P., No. 4, June term, 1897. Commonwealth of Pennsylvania, at the suggestion and to the use of Commonwealth Title Ins. & T. Co., trustee, &c., *v.* James Long. Plaintiff's statement of claim. Filed Jul- 24, 1897. J. Briggs, pro prothonotary. A. D. Wiler, Crawford, Loughlin & Dallas.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion of and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under Will of Benjamin Milnes, Dec'd, *vs.* JAMES LONG.	C. P., No. 4, June Term, 1897. No. 604.

35 *Suggestion of Defence.*

James Long, the above-named defendant, by the advice of his counsel, suggests that the plaintiff in the above case is not *to* entitled to judgment for want of an affidavit of defence, because the statement of claim filed is defective for the purpose in the following particulars:

1. The statement of claim filed shows that the amount claimed is claimed by the Commonwealth Title Insurance and Trust Company, trustee, as aforesaid, directly and not by or through the Commonwealth of Pennsylvania.

2. Because the act of assembly relating to official bonds requires that the claim shall be made by the Commonwealth of Pennsylvania, and that any liability under the bond in suit would be to the said Commonwealth of Pennsylvania and not to the said trust company, trustee, as stated.

JAS. LONG.

Endorsement: 604, J., '97, C. P., 4. Commonwealth of Penna., to use, &c., *v.* James Long. Suggestion of defence. Filed Aug. 5, 1897. Pennypacker, pro proth'y. White & White.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Co., Trustee, &c., *vs.* JAMES LONG.	Common Pleas. No. 4, June Term, 1897. No. 604.

Enter rule for judgment for want of a sufficient suggestion of defence, retbl. *sec. leg.*

ALFRED D. WILER.
CRAWFORD, LOUGHLIN & DALLAS.

36 Endorsement: C. P., No. 4, 604, June term, 1897. Commonwealth of Pa., &c., *vs.* James Long. Rule for judg't. Filed Sept. 2, 1897. J. M. A. D. Wiler, Crawford, Loughlin & Dallas.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased, *vs.* JAMES LONG.	C. P. No. 4, June Term, 1897. 604.

Assessment of Damages in Favor of the Commonwealth of Pennsylvania.

For penal sum of bond, $37,000.

Assessment of damages in favor of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased.

Amount due as per statement of claim.....	$30,148.18
Interest from Jan. 1, 1897, to Sept. 27, '97.....	1,350.82
	$31,499 00

I assess damages as above.

H. C. PENNYPACKER,
Pro Prothonotary.

Endorsement: C. P., 4, 604, June term, 1897. Commonwealth of Pennsylvania, to the use, &c., *vs.* James Long. Assessment of damages. Filed Sept. 29, 1897. J. Briggs, pro proth'y. Wiler, Crawford, Loughlin & Dallas.

37 COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rogers under the Will of Benjamin Milnes, Deceased,
vs.
JAMES LONG.
C. P., No. 4, June Term, 1897. No. 604.

Issue attachment surjudgment and summon as garnishees Union Trust Company, Merchants' National Bank, Girard National Bank, Eighth National Bank, Fourth Street National Bank, Huntingdon & Broad Top Railroad, Niagara Mining and Smelting Company, James Long Bro. & Co.

ALFRED D. WILER.
CRAWFORD, LOUGHLIN & DALLAS.

Add name of M. Simpson McCullough as garnishee.
Oct. 2, '97.

To proth'y of C. P., No. 4.

Endorsement: C. P., No. 4, 604, June term, 1897. Commonwealth of Pennsylvania, &c., *vs.* James Long. Pr. att. surjudg't. Filed Sep. 29, 1897. Hunter, pro proth'y. Wiler, Crawford, Loughlin & Dallas.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased,
vs.
JAMES LONG.
C. P., No. 4, June Term, 1897. No. 604.

Issue *fi. fa.*, retbl. *sec. reg.*

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Att'y. for Pl'ff.

To proth'y of C. P., No. 4.

38 Endorsement: C. P. No. 4, 604, June term, 1897. Commonwealth of Pennsylvania, &c., *vs.* James Long. Præcipe for *fi. fa.* Filed Sep. 29, 1897. Hunter, pro proth'y. Wiler, Crawford, Loughlin & Dallas.

Attachment Surjudgment.

COUNTY OF PHILADELPHIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that you levy upon and attach the goods and chattels, stocks, moneys, and interests of and debts due to James Long, defendant, in satisfaction of certain judgment obtained in our court of common pleas, No. 4, of the county of Philadelphia, at the suit of Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, dec'd, plaintiff, against the said defendant, of June term, 1897, No. 604, for the sum of thirty-one thousand four hundred and ninety-nine dollars, with interest from the 27th day of September, 1897, and costs.

And also that by honest and lawful men of your bailiwick you make known to the said defendant and to Union Trust Company, Merchants' National Bank, Girard National Bank, Eighth National Bank, Fourth Street National Bank, Huntingdon and Broad Top Mountain Railroad & Coal Co., Niagara Mining and Smelting Company, James Long Bro. & Co., and all other persons in whose hands or possession the said goods and chattels, stocks, moneys, interest, and debts or any of them may be attached as garnishees that they be and appear before our said court, at Philadelphia, on the first Monday of October next, to show, if anything they, the said defendant or the said garnishees, have to say, why the said judgment, besides costs of suit, should not be levied of the effects of the said defendant in the hands of the said garnishees; and have you then and there this writ.

39

Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, the 29th day of September, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

J. U. G. HUNTER,
Pro Prothonotary.

Endorsement: 604, June term, 1897, court of common pleas, No. 4. Commonwealth of Pennsylvania, &c., *v.* James Long, def't; Union Trust Co., Merchants' National Bank, Girard National Bank, Eighth National Bank, Fourth Street National Bank, Huntingdon & Broad Top Mountain R. R. & Coal Co., Jas. Long Bro. & Co. Att. surjudgment. Real debt, $31,499.00; int. from 9, 27, '97, —; att'y writ, &c., 7.25; proth'y, 3.37; cr. and sat., 25; *fi. fa.*, &c., 1.75; att. surjudgment, 1.25; costs on same, att'y, 6.00; proth'y, 3.62; garn. att'y, 13.00. M. Simpson McCullough. 11 a. m., 10, 2, '97. A. D. Wiler, Crawford, Loughlin & Dallas. (Sheriff's office, 10.20 o'clock, Sept. 29, 1897.)

Endorsement in lead pencil: N. H. as to James Long. 1.45 p. m. Per 9, 29, '97. J. Simpson Africa, Union Trust Co. Per 9,

29, '97, 2.20 p. m. F. W. Ayer, pres. Merchants' nat. bank, 330 Chestnut St. Per 9, 29, '97, 2.25 p. m. F. B. Reeves, vice-pres. Girard bank. Per 9, 29, '97, 2.30 p. m. B. M. Faries, ass't cash. Fourth St. nat. bank. Per 9, 30, '97, 9.45 a. m. Jas. A. Irwin, cashier 8th nat. bank. Left 9, 30, '97, 8.30 a. m. Residence of J. P. Donaldson, treasurer of Huntingdon & Broad Top R. R. Co., 4031 Baltimore Ave. Per 9, 30, '97, 4.15 p. m. Oliver Long, of the firm of James Long Bro. & Co., 263 Chestnut St. Left 10, 1, '97, 8.50 a. m. Residence of C. H. Schermerhorn, 304 N. 40th St., sec. of the Niagara Mining & Smelting Co. D'Autrech. M. H. as to McCullough.

Attached as within commanded and made known to garnishee as follows: Union Trust Co., by giving, Sept. 29, 1897, at 1 o'clock and 45 minutes p. m., a true and attested copy of the within writ to J. Simpson Africa, president of said company, and making known to him the contents thereof; and Merchants' National Bank, by giving, Sept. 29, 1897, at 2 o'clock and 20 minutes p. m., a like copy to F. W. Ayer, president of said bank, and making known to him the contents thereof; and Girard National Bank, by giving, September 29, 1897, at 2 o'clock and 25 minutes p. m., a like copy to F. B. Reeves, vice-pres't of said bank, and making known to him the contents thereof; and the Fourth Street National Bank, by giving, Sept. 29, 1897, at 2 o'clock and 30 minutes p. m., a like copy to B. M. Faries, ass't cashier of said bank, and making known to him the contents thereof; and 8th National Bank, by giving, Sept. 30, 1897, at 9 o'clock and 45 minutes a. m., a like copy to James A. Irwin, cashier of said bank, and making known to him the contents thereof; and the firm of James Long, Bro. and Company, by giving, Sept. 30, 1897, at 4 o'clock and 15 minutes p. m., a like copy to Oliver Long, of said firm, and making known to him the contents thereof; and the Huntingdon & Broad Top Mountain Railroad and Coal Co., by leaving, Sept. 30, 1897, at 8 o'clock and 30 minutes a. m., a like copy at the dwelling-house of J. P. Donaldson, treasurer of said company, residing at 4031 Baltimore avenue, with an adult member of his family; and the Niagara Mining and Smelting Company, by leaving, Oct. 1, 1897, at 8 o'clock and 50 minutes a. m., a like copy at the dwelling-house of C. H. Schmerhorn, secretary of said company, residing at 304 N. 40th St., with an adult member of his family; and *nihil habent* as to M. Simpson McCullough, gernishee, and James Long, def't.

So answers—

JOHN J. CURLEY,
Deputy Sheriff.

ALEXANDER CROW, JR., *Sheriff.*

Fieri Facias.

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that of the goods and chattels, lands and tenements, of James Long, defendant, in your bailiwick you cause to be levied as well *as* the sum of thirty-one thousand four hundred and ninety-nine dollars, lawful money of Pennsylvania, which
42 was adjudged — Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, plaintiff, lately in our court of common pleas, No. 4, of the county of Philadelphia, in a certain action of assumpsit between the said plaintiff and said defendant, as also the sum of ten dollars and eighty-seven cents for the costs and charges by the said plaintiff about its suit in that behalf expended, whereof the said defendant is convict, as appears of record, &c.

And have you those moneys before our judges, at Philadelphia, at our said court, there to be held the first Monday October next, to render to the said plaintiff for the judgment debt, damages, and costs aforesaid; and have you then and there this writ.

Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, the 29th day of September, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

J. U. G. HUNTER,
Pro Prothonotary.

Endorsement: 604, June term, 1897, court of common pleas, No. 4. Commonwealth of Pennsylvania, at the suggestion, &c., *vs.* James Long. *Fieri facias.* Real debt, 31,499.00; int. from 9, 27, '97; —— ——, att'y, &c., 7.25; proth'y, 3.37; crier & sat., .25; *fi. fa.*, 1.50; service, .25; att. surjudg't, 1.25; costs on same, att'y, &c.,
43 6.00; proth'y, 3.62; garn. att'y, 13.00. Sheriff's office, Sep. 29, 1897, 10.10 o'clock. Wiler, Crawford, Loughlin & Dallas. *Nulla bona.* So answers Alexander Crow, Jr., sheriff.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company under the Will of Benjamin Milnes, Dec'd, *vs.* JAMES LONG, Defendant, and EIGHTH National Bank *et al.*, Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

To prothonotary:

Enter my appearance for the Eighth National Bank, one of the above-named garnishees.

JOHN ROBERTS,
Att'y for Eighth Nat. Bk.

9, 30, '97.

Endorsement: No. 604, June term, 1897, C. P., No. 4. Commonwealth of Penna., &c., *vs.* James Long, def't, and the 8th Nat. Bk. *et al.*, garnishee-. Order for appearance. Filed Sep. 30, 1897. J. Kenderden, pro proth'y. John Roberts, att'y for 8th Nat. Bank.

COMMONWEALTH OF PENNSYLVANIA, &c.,
vs.
JAMES LONG, Defendant; GIRARD National Bank *et al.*, Garnishees.
} C. P., No. 4, June Term, 1897. No. 604.

44 Please enter our appearance for the Girard National Bank, garnishee in the above suit.

MORGAN & LEWIS,
Att'ys for Garnishee.

Sept. 30, 1897.

To the Hon. M. Russell Thayer, proth'y.

Endorsement: 604, June, '97, C. P., No. 4. Commonwealth, &c., *vs.* James Long, def't; Girard Nat'l Bank, garn. Order for appearance. Filed Sept. 30, 1897. Pennypacker, pro proth'y. Morgan & Lewis.

COMMONWEALTH OF PENNSYLVANIA, &c.,
vs.
JAMES LONG, Defendant, and FOURTH Street National Bank, Garnishee.
} C. P., No. 4, June Term, 1897. No. 604.

Enter my appearance for the garnishee, The Fourth Street National Bank, in the above-entitled case.

R. C. DALE.

To the prothonotary.

Endorsement: 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania, etc., *vs.* James Long, def't, and Fourth Street Nat'l Bank, gar. Appearance for garnishee. Filed Sept. 30, 1897. J. Kenderden, pro proth'y. R. C. Dale.

45 COMMONWEALTH OF PENNSYLVANIA, to Use, &c.,
vs.
JAMES LONG, Defendant, and THE UNION Trust Company, Garnishee.
} C. P., No. 4, June Term, 1897. No. 604. Att. Surjudgment.

To the prothonotary:

Enter my appearance for The Union Trust Company, the above-named garnishee.

PERCY B. METZGER,
Attorney for The Union Trust Company, Garnishee.

October 1, 1897.

Endorsement: No. 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania, to use, &c., *vs.* James Long, defendant, and The Union Trust Company, garnishee. Order for appearance. Filed Oct. 1, 1897. J. Briggs, pro proth'y. Metzger.

In the Court of Common Pleas, No. 4, of the County of Philadelphia, June T., 1897.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee, &c., *vs.* JAMES LONG, Defendant, and THE HUNTINGDON and Broad Top Mountain R. R. & Coal Co. *et al.*, Garnishees.	No. 604. Att. Surjudgment.

Enter my appearance for the Huntingdon and Broad Top Mountain Railroad and Coal Company, garnishees.

FRANK W. PAUL,
Att'y for Garnishees.

To prothonotary.

46 Endorsement: 604, C. P., No. 4, June term, '97. Commonwealth, to use, &c., *v.* James Long (def't) & The Huntingdon & Broad Top Mt R. R. & C. Co. *et al.*, garnishees. Order for entry of appearance for Huntingdon & B. T. — R. R. Co., garnishees. Filed Oct. 1, 1897. J. Kenderden, pro proth'y. F. W. Paul.

COMMONWEALTH OF PENNSYLVANIA, to the Use, etc., *vs.* JAMES LONG, Defendant; MERCHANTS' NATIONAL Bank *et al.*, Garnishees.	C. P., No. 4, June Term, 1897. 604.

To the prothonotary:

Enter my appearance for The Merchants' National Bank, summoned as one of the garnishees in the above case.

Yours, HENRY T. DECHERT,
Attorney for Merchants' National Bank, Garnishee.

Sept. 30, 1897.

Endorsement: 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania, to use, etc., *vs.* James Long, defendant; Merchants' National Bank *et al.*, garnishees. Order for appearance for Merchants' National Bank, garnishee. Filed Oct. 1, 1897. J. Briggs, pro proth'y. Henry T. Dechert.

COMMONWEALTH OF PENNSYLVANIA, to Use, &c., *vs.* JAMES LONG, Defendant, and THE UNION TRUST Company, Garnishee.	C. P., No. 4, June Term, 1897. No. 604. Att. Surjudgment.

The Union Trust Company, the above-named garnishee, pleads *nulla bona*.

PERCY B. METZGER,
Attorney for Garnishee.

October 1, '97.

47 Endorsement: No. 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania, to use, &c., *vs.* James Long, defendant, and The Union Trust Company, garnishee. Plea of garnishee. Oct. 1, 1897. J. Briggs, pro proth'y. Metzger.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under Will of Benjamin Milnes, Dec'd, *vs.* JAMES LONG.	C. P., No. 4, J., '97. 604.

Issue att. alias surjudg't and summon M. Simpson McCullough as garnishee; retbl. *sec. reg.*

A. D. WILER.
CRAWFORD, LOUGHLIN & DALLAS.

To proth'y of C. P.

Endorsement: C. P., No. 4, 604, June term, 1897. Commonwealth of Penna., &c., *v.* James Long, pr. for alias att. surjudg't *vs.* M. Simpson McCullough. Filed Oct. 5, 1897. Hunter, pro proth'y. Wiler, Crawford, Loughlin & Dallas.

Attachment Surjudgment.

COUNTY OF PHILADELPHIA, *ss*:

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you, as before we did, that you levy upon and attach the goods and chattels, stocks, moneys, and interests of and debts due to James Long, defendant, in satisfaction of a certain judgment obtained in our court of common pleas, No. 4, of the county of Philadelphia, at the suit of Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth
48 Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, plaintiff, against said defendant, of June term, 1897, No. 604, for the sum of

thirty-one thousand four hundred and ninety-nine dollars, with interest from the 29th day of September, 1897, and costs.

And also that by honest and lawful men of your bailiwick you make known to the said defendant and to M. Simpson McCullough and all other persons in whose hands or possession the said goods and chattels, stocks, moneys, interest, and debts or any of them may be attached, as garnishees, that they be and appear before our said court, at Philadelphia, on the first Monday of November next, to show, if anything they, the said defendant or the said garnishees, have to say, why the said judgment besides costs of suit should not be levied of the effects of the said defendant in the hands of said garnishee; and have you then and there this writ.

Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, the fifth day of October, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

J. U. G. HUNTER,
Pro Proth'y.

Endorsement: 604, June term, 1897, court of common pleas, No. 4. Commonwealth of Pennsylvania, at the suggestion, &c., *vs.* James Long, def't; M. Simpson McCullough, garnishee. 49 Alias att. surjudgment *vs.* M. Simpson McCullough. Real debt, 31,499.00; int. from Sept. 29, '97, —; att'y, writ, &c., 7.25; proth'y, 3.37; cr. and sat., .25; jury fee, —; att. surjudgment, 2.00; costs on same—att'y, 6.00; proth'y, 3.62; costs on prior att. garn., att'y, 13.00. Chestnut St. Nat'l Bank, 11 a. m., 10, 28, '97. Wiier, Crawford, Loughlin & Dallas. 9.05 a. m. Per., 10, 6, '97, M. Simpson McCullough, Market St. wharf. D'Autrech. Per., 10, 28, '97, 11.35 a. m., Wm. Steele, cashier, 721 Chestnut St. D'Autrech.

Attached as within commanded and made known to garnishees as follows, viz., M. Simpson McCullough, by giving to him Oct. 6, 1897, at 9 o'clock and 5 minutes a m., a true and attested copy of the within writ and making known to him the contents thereof, and Chestnut Street National Bank, by giving Oct. 28, 1897, at 11 o'clock and 35 minutes a. m., a like copy to William Steele, cashier of said bank, and making known to him the contents thereof, and *nihil habet* as to James Long, def't.

So answers—

JOHN J. CURLEY, *Deputy Sheriff.*
ALEXANDER CROW, JR., *Sheriff.*

COMMONWEALTH OF PENNA., at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Dec'd, *vs.* JAMES LONG, Defendant; M. SIMPSON MCCULLOUGH, Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

Enter my appearance for M. Simpson McCullough, garnishee in the above case.

GEO. TUCKER BISPHAM,
Girard Building.

October 8, 1897.

To the prothonotary common pleas.

50 Endorsement: No. 604, June term, 1897, common pleas, No. 4. Commonwealth of Pa., at the suggestion, etc., *vs.* James Long, def't; M. Simpson McCullough, garn. Order for appearance. Filed Oct. 8, 1897. J. Briggs, pro proth'y. Bispham.

In the Court of C. P., No. 4, of June Term, 1897.

JAMES LONG, Defendant, and HUNTINGDON & BROAD TOP MOUNTAIN R. R. & COAL CO., Garnishee. No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was there not at that time, or has there been since, up to the time of your answering, a balance in your hands in favor of the said defendant? State the amount particularly.

Third. Were you, at the time the writ in the above case was served upon you, or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever, or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due, upon which you had become in any manner
51 liable? State the character and amount of such indebtedness, and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you, or at any time since, did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control, when the writ in the above case was served upon you, any goods or mer-

chandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you, or at any time since, the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since did the defendant hold any stock or bonds in your company? If aye, state the same particularly. If
52 you answer no, then state if the defendant was not, shortly prior to the service of this writ, a stockholder or bondholder in your company. If so, then state the number of shares of stock and bonds, when they were transferred, and to whom.

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement.

To the garnishee above named or its attorney:

Please take notice that interrogatories, of which the foregoing is a copy, have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days or judgment *sec. reg.*

Yours respectfully,
A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, June term, 1897. No. 604. Attachment. James Long, defendant, and Huntingdon & Broad Top Mountain R. R. & Coal Co., garnishee. Interrogatories to garnishee. Enter rule on said garnishee to answer the within interrogatories in 20 days or judgment *sec. reg.* A. D. Wiler, Crawford, Loughlin & Dallas. To the prothonotary of the said court. Filed Oct. 1, 1897. Pennypacker, pro proth'y.

53 In the Court of Common Pleas of Philadelphia County, of June Term, 1897.

JAMES LONG, Defendant, and FOURTH STREET NATIONAL BANK, Garnishee. No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was

there not at that time or has there been since, up to the time of your answering, a balance in your hands in favor of the said defendant? State the amount particularly. If you answer no, then state if, shortly prior to the service of this attachment, the defendant did not have a deposit account in your bank; if so, state when and how the same was closed.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever; or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter
54 to become due upon which you had become in any manner liable? State the character and amount of such indebtedness and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control when the writ in the above case was served upon you any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you or at any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since did the defendant hold any stock in your bank? If aye, state the number of shares. If you answer
55 no, then state if the defendant was not shortly prior to the service of this writ a stockholder in your bank. If so, then state the number of shares, when they were transferred and to whom.

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement.

To the garnishee above named or its attorney:

Please take notice that interrogatories of which the foregoing is a copy have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *sec. reg.*

Yours respectfully,

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, of Philada. county, June term, 1897. No. 604. Attachment. James Long, defendant, and Fourth Street National Bank, garnishee. Interrogatories to Fourth Street National Bank, garnishee. Enter rule on said garnishee to answer the within interrogatories in 20 days, or judgment *sec. reg.* A. D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. To the prothonotary of the said court. Filed Oct. 19, 1897. Pennypacker, pro proth'y.

56 In the Court of Common Pleas, 4, of Philadelphia County, of June Term, 1897.

JAMES LONG, Defendant, and GIRARD NATIONAL BANK, Garnishee No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was there not at that time or has there been since, up to the time of your answering, a balance in your hands in favor of the said defendant? State the amount particularly. If you answer no, then state if shortly prior to the service of this writ of attachment the defendant did not have a deposit account in your bank. If so, state when and how the same was closed.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever; or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to
57 become due upon which you had become in any manner liable? State the character and amount of such indebtedness and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control when the writ in the above case was served upon you any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you or at

any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since did the defendant hold any stock in your bank? If aye, state the number of shares. If you answer
58 no, then state if the defendant was not shortly prior to the service of this writ a stockholder in your bank. If so, then state the number of shares, when they were transferred and to whom.

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement.

To the garnishee above named or its attorney:

Please take notice that interrogat ies, of which the foregoing is a copy, have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *sec. reg.*

Yours respectfully,

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, of Phila. county, June term, 1897. No. 604. Attachment. James Long, defendant, and Girard National Bank, garnishee. Interrogatories to Girard National Bank, garnishee. Enter rule on said garnishee to answer the within interrogatories in 20 days, or judgment *sec. reg.* A. D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. To the prothonotary of the said court. Filed Oct. 19, 1897. Pennypacker, pro proth'y.

In the Court of Common Pleas of Philadelphia County, of June Term, 1897.

JAMES LONG, Defendant, and EIGHTH NATIONAL BANK, Garnishee. No. 604. Attachment.

Interrogatories to the Above named Garnishee.

First. Do you know the defendant named in the above-stated action?

59 Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was there not at that time or has there been since, up to the time of your answering, a balance in your hands in favor of the said defendant? State the amount particularly. If you answer no, then state if, shortly prior to the service of this attachment, the defend-

ant did not have a deposit account in your bank. If so, state when and how the same was closed.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever, or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due upon which you had become in any manner liable? State the character and amount of such indebtedness and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

60 Fifth. Had you in your possession or under your control when the writ in the above case was served upon any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you or at any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since did the defendant hold any stock in your bank? If aye, state the number of shares. If you answer no, then state if the defendant was not shortly prior to the service of this writ a stockholder in your bank. If so, then state the number of shares, when they were transferred, and to whom.

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement.

To the garnishee above named or its attorney:

Please take notice that interrogatories, of which the foregoing is a copy, have been filed in the above-stated case, and that a
61 rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *sec. reg.*

Yours respectfully,
A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, of Philada. county, June term, 1897. No. 604. Attachment. James Long, defendant, and Eighth National Bank, garnishee. Interrogatories to Eighth National Bank, garnishee. Enter rule on said garnishee to an-

swer the within interrogatories in 20 days, or judgment *sec. reg.* A. D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. To the prothonotary of the said court. Filed Oct. 19, 1897. Pennypacker, pro proth'y.

In the Court of Common Pleas of Philadelphia County, June Term, 1897.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use, &c.,
vs.
JAMES LONG, Defendant; THE UNION Trust Company, Garnishee. } No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was there not at that time or has there been since up to the time
62 of your answering a balance in your hands in favor of the said defendant? State the amount particularly. If you answer no, then state if shortly prior to the service of this attachment the defendant did not have a deposit account in your company. If so, state when and how the same was closed.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever, or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due upon which you had become in any manner liable? State the character and amount of such indebtedness and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control when the writ in the above case was served upon you any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant, or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

63 Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, respresented, or stated that at the time the writ in the above case was served upon you or at any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since did the defendant hold any stock in your company? If aye, state how many shares. If you answer no, then state if the defendant was not, shortly prior to the service of this writ, a stockholder in your company. If so, state the number of shares and when they were transferred and to whom.

Eighth. Does the defendant appear as the registered owner of any stock or bond of the Niagara Mining and Smelting Company, of which your company is the registrar? If aye, state the amount of same; if no, then state if the defendant did not, shortly prior to the service of the writ in this case, appear on said books as the owner of stock or bonds; and, if so, state the amount of same and when they were transferred and to whom.

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

64 Endorsement.

To the garnishee above named or P. B. Metzger, Esq., attorney for garnishee:

Please take notice that interrogatories, of which the foregoing is a copy, have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *scc. reg.*

Yours respectfully,
ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, of Philada. county, June term, 1897. No. 604. Attachment. Commonwealth of Penna., &c., *vs.* James Long, defendant, and The Union Trust Co., garnishee. Interrogatories to Union Trust Co., garnishee. Enter rule on said garnishee to answer the within interrogatories in 20 days, or judgment *scc. reg.* A. D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. To the prothonotary of the said court. Filed Oct. 19, 1897. Pennypacker, pro proth'y.

In the Court of Common Pleas of Philadelphia County, June Term, 1897.

JAMES LONG, Defendant, and MERCHANTS' NATIONAL BANK, Garnishee. No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was

there not at that time or has there been since, up to the time
65 of your answering, a balance in your hands in favor of said defendant? State the amount particularly. If you answer no, then state if shortly prior to the service of this writ the defendant did not have a deposit account in your bank. If so, state when and how the same was closed.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever, or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due upon which you had become in any manner liable? State the character and amount of such indebtedness and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control, when the writ in the above case was served upon you, any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said
66 defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you or at any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since, did the defendant hold any stock in your bank? If aye, state the number of shares. If you answer no, then state if the defendant was not shortly prior to the service of this writ a stockholder in your bank. If so, then state the number of shares, when they were transferred, and to whom.

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement.

To the garnishee above named or its attorney:

Please take notice that interrogatories, of which the foregoing is a copy, have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *sec. reg.*

Yours respectfully,

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, of Philada. county, June term, 1897. No. 604. Attachment. James Long, defendant, and Merchants' National Bank, garnishee. Interrogatories
67 to the Merchants' National Bank, garnishee. Enter rule on said garnishee to answer the within interrogatories in 20 days, or judgment *sec. reg.* Alfred D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. To the prothonotary of the said court. Filed Oct. 19, 1897. Pennypacker, pro proth'y.

COMMONWEALTH OF PENNSYLVANIA, &c., *vs.* JAMES LONG, Defendant, and FOURTH Street National Bank, Garnishee. } June Term, 1897, C. P., No. 4. No. 604.

Answer of the Fourth Street National Bank to the Interrogatories Filed in the Above-entitled Case.

The garnishee answers all the interrogatories filed in the negative, the said James Long never having been a stockholder or depositor in said bank, nor has the said bank had any business transactions with him whatsoever.

RICHARD C. DALE,
Att'y for Garnishee.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

R. H. Rushton, being duly sworn according to law, doth depose and say: I am the cashier of The Fourth Street National Bank, garnishee in the above-entitled case; that the statements
68 made in the foregoing answers are just and true, as I verily believe.

R. H. RUSHTON.

Sworn and subscribed to before me this 21st day of October, 1897.
[SEAL.] A. P. RUTHERFORD,
Notary Public.

Endorsement: 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania *vs.* James Long, def't, and Fourth Street National Bank, garnishee. Answer to interrogatories. Filed Oct 22, 1897. J. Briggs, pro proth'y. R. C. Dale.

COMMONWEALTH, to Use, *vs.* JAMES LONG, Defendant; MERCHANTS' National Bank, Garnishee. } C. P., No. 4, June Term, 1897. 604.

Merchants' National Bank of Philadelphia, summoned as garnishee in this case, answers the several interrogatories as follows:

First. The officers of the garnishee do know the defendant in the above-stated action.

Second. The garnishee has had business transactions with the defendant, but not for several years. There was no account be-

tween the defendant and garnishee at the time the writ in this case was served upon garnishee. There was not then nor has there been since that time any balance in the hands of the said
69 garnishee in favor of the said defendant. The defendant did not have a deposit account with the garnishee shortly prior to the service of this writ.

Third. Neither at the time the writ in this case was served upon the garnishee nor at any time since has the garnishee been indebted to the defendant in any manner whatsoever, nor did the defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due upon which the garnishee has in any manner become liable.

Fourth. Neither at the time of the service of the writ in this case nor at any time since did the defendant claim from the garnishee any money or property on any account whatsoever. There was not any debt or demand then in suit between garnishee and defendant.

Fifth. When the writ in this case was served upon the garnishee it had not in its possession or under its control any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the defendant or in which the said defendant was in any manner interested.

Sixth. The garnishee has received no letters from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in this case was served or at any time
70 since the said defendant had any claim or demand against the garnishee whatsoever.

Seventh. Neither at the time the writ in this case was served upon the garnishee nor at any time since has the defendant been a stockholder in the garnishee, and he had not been a stockholder in the garnishee for several years prior to this time.

The said garnishee prays to be hence dismissed with its reasonable costs in its behalf expended.

MERCHANTS' NATIONAL BANK,
By HARTMAN BAKER, *Cashier.*

Hartman Baker, being duly affirmed according to law, says that he is the cashier of the Merchants' National Bank of Philadelphia, summoned as garnishee in the above case, and that the facts set forth in the foregoing answer are truly stated.

HARTMAN BAKER.

Affirmed and subscribed before me this 21st day of October, A. D. 1897.

[SEAL.] JOHN W. TAGGART,
Notary Public.

Endorsement: 604, June term, 1897, C. P., No. 4, Commonwealth, to use, &c., *vs.* James Long, defendant; Merchants' National Bank of Phila., garnishee. Answer of the Merchants' National Bank of Philadelphia to interrogatories. Filed Oct. 22, 1897. J. Briggs, pro proth'y. Henry T. Dechert.

71 COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of, &c., *vs.* JAMES LONG, Defendant, and THE UNION Trust Co., Garnishee. } C. P., No. 4, June Term, 1897. No. 604. Att. Surjudgment.

CITY OF PHILADELPHIA, *ss:*

Richard S. Edwards, being duly sworn according to law, says that he is the treasurer of The Union Trust Company, the garnishee above named, and that in answer to the interrogatories filed states as follows:

To the first interrogatory the garnishee answers, "Yes."

To the second interrogatory the garnishee answers, "No."

And, further answering, the garnishee says that the said defendant has had no deposit account upon the books of the said garnishee for the past twelve months and upwards.

To the third interrogatory the garnishee answers, "No."

To the fourth interrogatory the garnishee answers, "No."

To the fifth interrogatory the garnishee answers, "No."

To the sixth interrogatory the garnishee answers, "No."

To the seventh interrogatory the garnishee answers that the said defendant has not had any stock of the said garnishee in his, the said defendant's, name since the year 1888, nor to the knowledge of the said garnishee has the said defendant any of said stock in the name of any one else.

72 To the eighth interrogatory the garnishee says that the registration books of the Niagara Mining and Smelting Company do not contain the name of the said defendant as being the registered owner of any of the bonds of the said mining and smelting company; and, further answering, the garnishee says that it has no knowledge that said defendant holds any of said bonds in the name of any one else.

RICHARD S. EDWARDS. [SEAL.]

Sworn and subscribed to before me this twentieth day of October, 1897.

H. G. HART,
Notary Public.

PERCY B. METZGER,
Attorney for The Union Trust Company, Garnishee.

October 21, 1897.

Endorsement: No. 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania *vs.* James Long, defendant, and The Union Trust Company, garnishee. Answers of garnishee. Filed Oct. 21, 1897. Pennypacker, pro proth'y. Metzger.

73	THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion, &c., of the Commonwealth Title & Ins. Trust Co., *vs.* JAMES LONG, Defendant, and EIGHTH National Bank, Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

Answers of the Garnishees, The Eighth National Bank, to the Interrogatories Filed in the Above Matter.

In answer to the first interrogatory, James A. Irwin, cashier of the Eighth national bank, says that he is acquainted with the defendant named in the above-stated action.

In answer to the second interrogatory, he says that the Eighth national bank had business transactions with the defendant at the time the writ in the above case was served. The defendant had an account with the garnishee, The Eighth National Bank, and at that time — and there now is due a balance in favor of said defendant, James Long, amounting to the sum of seven dollars and eighty-six cents.

In answer to the third interrogatory, the garnishee says that the Eighth national bank at the time of the service of the writ of attachment — and it has been since then indebted to the said defendant in the sum of seven dollars and eighty-six cents.

In answer to the fourth interrogatory, the garnishee says that at the time the writ in the above case was served nor at any time since did the said defendant claim from the garnishee anything
74 more than seven dollars and eighty-six cents. There was no debt or demand in suit between the garnishee and the defendant.

In answer to the fifth interrogatory, the garnishee had in its possession only the balance due on deposit, to wit, the sum of seven dollars and eighty-six cents, as heretofore stated.

In answer to the sixth interrogatory, no letters have been received from the defendant wherein it was alleged, represented, or stated that at the time the writ in the above case was served, nor at any time since, that the defendant had any claim except as heretofore stated.

In answer to the seventh interrogatory, at the time the writ in the above case was served upon the garnishee the defendant stood credited with thirty-three (33) shares of the capital stock of The Eighth National Bank, the garnishee, which, according to the stock ledger of the garnishee, still remains to the credit of the defendant. The defendant has not, to the knowledge of the garnishee, transferred said stock, at least it has not been transferred on the books of the garnishee, but the garnishee has no knowledge as to whether the stock has been sold by the defendant or not.

The attorney for the garnishee asks for an allowance of twenty-five dollars as attorney's fee in the above matter.

CITY OF PHILADELPHIA, *ss:*

James A. Irwin, cashier of the Eighth national bank,
75 being duly sworn according to law, doth depose and say that the answers as above stated are true to the best of his knowledge, information, and belief.

JAMES A. IRWIN.

Sworn and subscribed to before me this 25th day of October, 1897.

EDWIN F. GLENN,
[SEAL.] *Notary Public.*

Endorsement: No. 604, June T., 1897, C. P., No. 4. The Com. of Pennsylvania, at the suggestion, &c., of the Com. Title Ins. & Trust Co., *vs.* James Long, defendant, and The Eighth National Bank, garnishee. Answers to interrogatories. Filed Oct. 25, 1897. J. Briggs, pro proth'y. John Roberts, att'y for garnishee.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion, &c., of the Commonwealth Title Ins. & Trust Co., *vs.* JAMES LONG, Defendant, and THE EIGHTH National Bank, Garnishee. } C. P., No. 4, June Term, 1897. No. 604.

The garnishee, the 8th National Bank, further answers to the seventh interrogatory filed in the above case as follows:

James Long, the defendant, has, by his attorney, R. P. White, Esq., notified the garnishee that on September 5, 1889, he obtained a loan from the Chestnut Street bank, in the city of Philadelphia, amounting to seventeen thousand eight hundred and thirty-one dollars, and gave as collateral to secure said loan the certificate or certificates of the thirty-three shares of the capital stock of
76 the Eighth national bank; that said loan has not been paid, and that said bank that made the loan still holds the collateral to secure the payment thereof.

A copy of said notice is hereby made a part of the answer to the seventh interrogatory.

"BANK *vs.* LONG.

PHILADELPHIA, *Oct. 27th*, 1897.

John Roberts, Esq.

DEAR SIR: I find that the 33 shares 8th N. bk. stock standing in James Long's name on its books are pledged with the Chestnut St. bank since Sept. 5th, 1889, as collateral for a loan which at the time of the service of the attachment and now amounts to $17,831.

Yours truly,

(Signed) R. P. WHITE."

PHILADELPHIA COUNTY, *ss:*

James A. Irwin, cashier of the Eighth national bank, being duly sworn according to law, doth depose and say that the further answer to the seventh interrogatory is true to the best of his knowledge, information, and belief.

JAMES A. IRWIN.

Sworn and subscribed to before me this 28th day of October, A. D. 1897.

EDWIN F. GLENN,
Notary Public.

[SEAL.]

77 Endorsement: No. 604, June T., 1897, C. P., No. 4. The Com. of Pennsylvania, at the suggestion, &c., *vs.* James Long, defendant, and the 8th National Bank, gar. Supplemental answer to seventh interrogatory. Filed Oct. 26, 1897. P. H. White, pro proth'y. John Roberts, att'y for garnishee.

COMMONWEALTH OF PENNSYLVANIA, to the Use, &c., of the Commonwealth Title Insurance and Trust Company, Trustee, &c., *vs.* JAMES LONG, Defendant; EIGHTH NATIONAL Bank, Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

Enter rule for judgment against the Eighth National Bank, garnishee, for amount admitted to be due in its answers.

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

To proth'y of C. P., No. 4.

Endorsement: C. P., 4, 604, June term, 1897. Commonwealth of Pa., &c., to use of Commonwealth Title Ins., &c., Co., trustee, *v.* James Long, def't; 8th Nat'l Bk., gar. Rule for judg't against 8th Nat'l Bank for amount admitted to be due by its answers. Filed Oct. 27, 1897. C. H. W. A. D. Wiler, Crawford, Loughlin & Dallas.

In the Court of Common Pleas, No. 4, of the County of Philadelphia, of June Term, 1897.

COMMONWEALTH OF PENNSYLVANIA, to Use, &c., of the Commonwealth Title, Insurance & Trust Co., Trustee for Mary Rodgers under Will of Benjamin Milnes, Deceased,
v.
JAMES LONG, Defendant, and THE HUNTingdon & B. T. Mt. R. R. & Coal Company, Garnishees.
} No. 604. Attachment.

78 *Answers of the Huntingdon and Broad Top Mountain Railroad and Coal Company, Garnishees.*

1st. Garnishees know defendant.

2nd. Garnishees have had business transactions with defendant a number of years ago, defendant at that time being one of the trustees of the company; but when the writ in the above case was served garnishees had not in their hands, nor have they had since, any balance in favor of defendant.

3rd. When the writ in the above case was served the said garnishees were not indebted to defendant, nor have they since become indebted to him; nor do garnishees know of any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due, held by defendant, upon which the garnishees had become in any manner liable.

4th. The defendant did not claim of the garnishees when the writ in the above case was served any money or property, nor has he since made any such claim. There is no suit now pending between the defendant and garnishees, nor was there any such suit at the time the writ was served.

5th. When the writ in the above case was served garnishees had no goods, merchandise, or property, estate, or effects whatsoever in their possession or under their control belonging to defend-
79 ant or in which he was in any manner interested.

6th. Garnishees have received no letters from defendant or from any one else of the tenor inquired of by the said interrogatory.

7th. Defendant had not at the time the writ in the above case was served any stocks or bonds standing in his name upon the books of the company. The defendant was the owner of twenty-nine shares of the common stock of the railroad company, garnishees, prior to April 1st, 1897, as appears by the stock ledger, but on that day the said twenty-nine shares were transferred by defendant to the order of Ed. B. Smith & Co.

SPENCER M. JANNEY,
President. [SEAL.]

J. P. Donaldson, treasurer of the Huntingdon and Broad Top Mountain Railroad and Coal Company, being duly affirmed, says that the foregoing answers to the interrogatories propounded to the company as garnishees are true.

J. P. DONALDSON, *Treasurer.*

Affirmed and subscribed this fifth day of November, A. D. 1897, before me—

[SEAL.] GEORGE W. SELTZER,
Notary Public.

Endorsement: 604, June T., 1897, C. P., No. 4. Commonwealth, to use, &c., *v.* James Long, defendant, & The Huntingdon & B. T. M. & Coal & R. R., garnishee. Answers of garnishees to interrogatories. Filed Nov. 6, 1897. P. H. White, pro proth'y. Frank W. Paul, att'y for garnishee.

80 In the Court of Common Pleas, 4, of Philada. County, of June Term, 1897.

JAMES LONG, Defendant, and CHESTNUT ST. NAT'L BANK, Garnishee. No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was there not at that time or has there been since, up to the time of your answering, a balance in your hands in favor of the said defendant? State the amount particularly.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever, or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due upon which you had become in any manner liable? State the character and amount of such indebtedness and

81 when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control when the writ in the above case was served upon you any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you or at any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Has the defendant, James Long, hypothecated with you securities for a loan? If so, state when said loan was created, and for
82 what amount and what collateral you had from time to time deposited to secure the same, and what collateral you at present have, in whose name they stand, and the amount now due on same.

A. D. WILER,
CRAWFORD, LAUGHLIN & DALLAS,
Attorney- for Plaintiff.

To the garnishee above named or attorney:

Please take notice that interrogatories, of which the foregoing is a copy, have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *sec. reg.*

Yours respectfully,
A. D. WILER,
CRAWFORD, LAUGHLIN & DALLAS,
Attorney- for Plaintiff.

Endorsement: Court of common pleas, 4, of Philada. county, June term, 1897. No. 604. Attachment. James Long, defendant, and Chestnut St. National Bank, garnishee. Interrogatories to garnishee. Filed Nov. 6, 1897. P. W. White, pro proth'y. Enter rule on said garnishee to answer the within interrogatories in 20 days, or judgment *sec. reg.* A. D. Wiler, Crawford, Loughlin & Dallas, attorney- for plaintiff. To the prothonotary of the said court.

COMMONWEALTH OF PENNSYLVANIA, &c., *vs.* JAMES LONG, Defendant; GIRARD NATIONAL Bank, Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

83 *Answers of Girard National Bank, Garnishee, by Francis B. Reeves, Vice-President.*

To the first interrogatory: Yes.

To the second interrogatory: No to every part thereof; the defendant never had an account with the Girard national bank.

To the third interrogatory: No.

To the fourth interrogatory: No; none.

To the fifth interrogatory: No.

To the sixth interrogatory: No.

To the seventh interrogatory: No.

MORGAN & LEWIS,
Att'ys for Girard Nat'l Bank, Garnishee.

Nov. 5, 1897.

STATE OF PENNSYLVANIA, }
City and County of Philadelphia, } ss:

Francis B. Reeves, being duly sworn according to law, doth depose and say the foregoing answers to interrogatories in the above-entitled cause are true.

FRANCIS B. REEVES.

Sworn — and subscribed before me this 5th day of November, 1897.

MORRIS R. BOCKIUS,
Notary Public.

[SEAL.]

84 Endorsement: 604, June term, 1897, C. P., No. 4. Commonwealth, &c., *vs.* James Long, def't; Girard Nat'l Bk., garnishee. Answers of Girard Nat'l Bank, garnishee. Filed Nov. 6, 1897. P. White, pro proth'y. Morgan & Lewis.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers, *vs.* JAMES LONG, Defendant; CHESTNUT STREET Nat. Bk., Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

Answers of Chestnut Street National Bank, a Garnishee in the Above Case, to the Interrogatories of the Above-named Plaintiff.

First. To the first interrogatory I answer that I know the defendant in the above-stated action.

Second. To the second interrogatory I answer that said bank has had business relations with the defendant; that there was no
85 balance in his favor then, and there has been none since up to this date in the said The Chestnut Street national bank, but that said James Long was indebted to said bank in the sum of $17,831, with interest from the 22nd day of April, 1897.

Third. In answer to third interrogatory, I answer that at the time the writ in above case was served upon the said The Chestnut Street national bank the said bank was not indebted to the said defendant in any manner whatsoever so far as is known to the said bank, and the said bank has no knowledge that at the time the writ in the above case was served the said defendant, James Long, held any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due upon which the said bank had become in any manner liable. Prior to the service of the writ in the above case upon the said bank, to wit, September 20th, 1897, the said bank issued a due bill for the sum of $2,900, of which the following is a true and correct copy:

Number 20968.

Clearing-house Due Bill.

The Chestnut Street national bank.

PHILADELPHIA, *Sept.* 20, 1897.

Due by the Chestnut Street national bank to banks, two
86 thousand nine hundred and — dollars.

This due bill is only good when signed by one and countersigned by another authorized person, and is payable only in the exchanges through the clearing-house the day after issue.

$2,900.00. W. W. PRICE, *Teller.*

Countersigned:
W. STEELE, *Cas.*

And delivered the same to James Long, the defendant, he having closed his account with the said bank. On the 3rd day of November, 1897, the said James Long, the defendant, desiring to appropriate a sufficient amount of the due bill to the payment of the interest then due upon his said indebtedness to the said bank, surrendered the said due bill to the said bank for that purpose, and the bank then issued a new due bill for the amount of the said first due bill, less the amount of the said interest, to wit, for the sum of $2,444.32, of which the following is a true and correct copy:

Number 21231.

Clearing-house Due Bill.

The Chestnut Street national bank.

PHILADELPHIA, *Nov. 3rd*, 1897.

Due by the Chestnut Street national bank to banks, two thousand four hundred and forty-four $\frac{32}{100}$ dollars.

This due bill is only good when signed by one and countersigned by another authorized person, and is payable only in the exchanges through the clearing-house the day after issue.

$2,444.32. W. W. PRICE, *Teller.*

Countersigned:
W. STEELE, *Cas.*

87 And delivered the same to the said James Long, the defendant. The said last-mentioned due bill was afterwards presented to the said bank for payment through the clearing-house and was paid.

Fourth. The defendant, James Long, made no claim at the time the writ in the above case was served upon the said bank or since that time for any money or property on any account whatsoever, except as stated in the answer to the third interrogatory. There was no debt or demand in suit between the said defendant and the said bank.

Fifth. When the writ in the above case was served, the said bank held as collateral security for the indebtedness to it mentioned in the answer to the second interrogatory 77 shares of "Natural Gas Trust stock," of the value of $160 per share, and 33 shares of the capital stock of the Eighth National Bank of Philadelphia, of the value of $264 per share.

Sixth. No.

Seventh. The defendant, James Long, did hypothecate with the said bank the securities mentioned in the answer to the fifth interrogatory, to wit, the 77 shares of Natural Gas Trust stock and 33 shares of the Eighth National Bank stock, as collateral for
88 loans made from time to time to him by the said bank. The said bank has made loans to the said James Long since September 5, 1889, which have been increased and diminished from time to time and for which securities were hypothecated by him with the said bank. The bank does not deem it important for the purposes of this case to go further back than October 29th, 1894; but, if it should be deemed necessary, is willing to exhibit to the court the entire accounts between it and the said defendant, James Long. At the date last named, to wit, October 29, 1894, the defendant, James Long, was indebted to the bank in the sum of $36,000, and for this indebtedness the bank held as collateral security 91 shares of 8th National Bank stock and 88 shares of the Natural Gas Trust stock.

On June 10, 1895, the bank surrendered 20 shares of Natural Gas Trust stock to James Long, leaving a balance of 68 shares.

On June 14, 1895, James Long deposited 9 shares of Natural Gas Trust stock, making a total of 77 shares of Natural Gas Trust stock.

On September 28, 1896, Mr. James Long paid off $13,000 of the loan, leaving a balance due of $23,000.

On December 14, 1896, the bank surrendered 42 shares of the Eighth National Bank stock, leaving a balance in hand of 49 shares.

On March 11, 1897, bank loaned James Long $7,500, mak-
89 ing the total loan $30,500, and James Long deposited 32 shares of the Eighth National Bank stock, making the total of that stock deposited 81 shares.

On April 15, 1897, James Long paid off $5,812.50, leaving a balance due of $24,687.50, and the bank surrendered 22 shares of the Eighth National Bank stock, leaving a balance of said stock of 59 shares.

On April 22, 1897, James Long paid off $6,856.50, leaving a balance due of $17,831.00, and the bank surrendered 26 shares of the Eighth National Bank stock, leaving a balance of said stock of 33 shares; so that upon October 28, 1897, the day on which writ in above case was served, the defendant, James Long, owed the bank $17,831, and the bank held as collateral security for said loan 77 shares of Natural Gas Trust stock and 33 shares of Eighth National Bank stock. The said stock was in the name of James Long.

WILLIAM S. STENGER,
Attorney for Chest. St. National Bank, Garnishee.

COUNTY OF PHILADELPHIA, *ss:*

William Steele, being duly sworn according to law, deposes and says that he is the cashier of The Chestnut Street National Bank, the above-named garnishee; that he has read the foregoing answers, and that the same are true, to the best of his knowledge and belief.

WILLIAM STEELE.

Sworn to and subscribed before me this 24th day of November, A. D. 1897.

JNO. F. REARDON,
Notary Public.

[SEAL.]

Endorsement: 604, C. P., 4, June term, 1897. The Commonwealth, at the suggestion and to the use of the Commonwealth Title and Trust Company, trustee for Mary Rodgers, *vs.* James Long, defendant; Chestnut Street National Bank, garnishee. Filed Nov. 24, 1897. J. Briggs, pro proth'y. W. S. Stenger, att'y for garnishee.

Sci. Fa. Surbill of Discovery.

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

Whereas Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, plaintiff, did on the 7th day of December, 1897, file a bill of discovery in our court of common pleas, No. 4, for the county of Philadelphia against James Long, defendant, setting forth as in and by the said bill so filed in said court will fully appear, and the said plaintiff praying that a fit remedy may be had against the said defendant, we do therefore command you that you make
91 known to the said James Long, defendant, that he be and appear before our judges, at Philadelphia, at our court of common pleas, No. 4, there to be holden for the said county, the first Monday of January next, to answer the said bill and all such interrogatories as shall be propounded to him or show cause why he should not and abide the judgment of the court in the premises, agreeably to the act of assembly in such case made and provided; and have you then there this writ.

Witness the Honorable Michael Arnold, president of our said court, at Philadelphia, this 7th day of December, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

JAS. W. FLETCHER,
Per Proth'y.

[SEAL.]

Made known to James Long by giving to him, December 8th, 1897, being ten days prior to the return day hereof, a true and at-

tested copy of the within writ, bill of discovery, and interrogatories and making known to him the contents thereof.

So answers—

JOHN J. CURLEY, *Deputy Sheriff.*
ALEXANDER CROW, JR., *Sheriff.*

92 Endorsement: 604, June term, 1897, court of common pleas, No. 4. Commonwealth of Penna., &c., *v.* James Long. *Sci. fa.* surbill of discovery. A. D. Wiler, Crawford, Loughlin & Dallas.

In the Court of Common Pleas, No. 4, of June Term, 1897, Sitting in Equity.

Between THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustees for Mary Rodgers under the Will of Benjamin Milnes, Deceased, Plaintiff, and JAMES LONG, Defendant. No. 604.

To the honorable the judges of the said court:

Your orator complains and says:

1. In the court of common pleas, No. 4, of June term, 1897, No. 604, the plaintiff recovered a judgment against the said James Long for the sum of thirty-one thousand four hundred and ninety-nine dollars, the whole amount of which is due, together with interest from September 29, 1897.

2. That the aforesaid judgment against said James Long was obtained on a bond bearing date September 14, 1875, given
93 by him for the faithful performance by John Milnes of his duties as trustee of the estate of Benjamin Milnes, deceased, and which represented the defalcation of said John Milnes. The said John Milnes departed this life on the 28th day of February, A. D. 1897, and that shortly prior to his death the said James Long had made an arrangement with said John Milnes and his children, the exact details of which are unknown to your orator, but which, they are informed, was that said James Long was to pay the defalcation and the children of the said John Milnes was to assign to him certain interest in the estate of their grandfather which they had in remainder to protect him; that before the papers to carry out this arrangement were made the said John Milnes unexpectedly died and his children then refused to carry out their agreement; in consequence thereof the said James Long has refused to pay any part of said judgment.

3. That on May 26, 1887, the said James Long executed to Sarah Long a bond and mortgage in the sum of $20,000, secured on his dwelling-house, north side of Girard avenue and ninety feet east of Sixteenth street, and other premises fully described in said mortgage, same being recorded in Philadelphia county, in Mortgage Book G. G. P. No. 232, page 62, etc., and fully described therein.

4. That shortly thereafter, to wit, September 23, 1887, the
94 said James Long executed another mortgage to his daughter, Sarah Long, to secure the sum of $30,000, secured on his factory building, southeast corner of Second and Oxford streets, and other premises fully described in said mortgage, same being recorded in Philadelphia county, in Mortgage Book G. G. P. No. 255, page 389, etc., and fully described therein.

5. That your deponent is informed that while said mortgages are given to Sarah Long individually, and although executed several months apart, yet the said James Long alleges that same were given for the benefit of said Sarah Long and another daughter, Jane N. Bonbright, and alleges that a large part of the consideration for same was two legacies amounting to $20,000, with interest from the year 1873 or 1874, which were bequeathed to them under the will of one Thomas G. Duncan, and which he alleges he did not pay to them but retained same; but which legacies the said James Long, in his account filed in said estate in orphans' court of Philadelphia county of November, 1876, No. 144, alleges he paid and claimed credit for same and which credit was allowed him.

6. That said James Long, by assignment dated June 10, 1887, assigned a bond and mortgage of M. Simpson McCullough, given to secure the sum of $150,000, and secured on real estate in Longport, New Jersey, to Richard Y. Cook, trustee, for his daughters, Sarah Long and Jane N. Bonbright; which transfer your
95 orator believes to have been made without any valuable consideration.

7. That at said time, to wit, in 1887, the said James Long was liable on said bond of John Milnes and was aware that at said time the said John Milnes was insolvent, as he, the said James Long, was at that time assisting him by endorsing his notes.

And, further, that at said time, to wit, 1887, the said James Long was heavily indebted, having incurred large liabilities by reason of the failure of John and James Hunter, and also by reason of his interest in the Glamorgan Iron Company, and that said transfers were a large part of the tangible property owned by him at that time, his other property being variously entangled, and was made at a time when he was heavily indebted and when he was liable for large future claims, among them being the claim on this bond.

8. That your deponent is further informed that just shortly prior to the obtaining of the judgment in this case the said James Long disposed of certain property held by him, to wit, by assignment of mortgage dated the nineteenth day of March, 1897, he assigned to the fire association a certain mortgage given by A. H. Phillips and others to secure the sum of $15,000; also, on April 1st, 1897, he assigned twenty-nine shares of the common stock of the Hunt-
96 ingdon and Broad Top Railroad Company to the order of E. B. Smith & Co.

9. Your orator has reason to believe that the said defendant, James Long, has real and personal estate wherewith the same may be satisfied, but by reason of the concealment or fraudulent trans-

fer thereof your orator is prevented from having execution of its judgment.

10. The defendant has possession or knowledge of such real or personal estate or can make discovery of such facts as will enable the plaintiffs to have satisfaction of its judgment.

And that the said defendant may make a full and true disclosure and discovery as to the several matters aforesaid, to the end that your orator may be able to have execution of his said judgment—

May it please your honors to grant unto your orator a writ of *scire facias*, to the sheriff of the county of Philadelphia directed, requiring — to make known to the said James Long that he be and appear before this honorable court, at a certain time to be therein appointed, to answer this bill and all such interrogatories as shall be propounded to him, or show cause why he should not, and abide the judgment of this honorable court in the premises.

That your orators may have such other relief in the prem-
97 ises as to your honorable court may seem proper.

And your orator will ever pray, etc.

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
For the Plaintiff.

Edw'd H. Bonsall, being duly affirmed, doth say that he is the 2nd vice-president of The Commonwealth Title Insurance and Trust Company, the plaintiff in the above bill, and that the facts set forth therein are true to the best of deponent's knowledge, information, and belief.

EDW. BONSALL.

Affirmed and subscribed to before me this 1st day of Dec., A. D. 1897.

ANDREW T. KAY,
[SEAL.] *Notary Public.*

Interrogatories Propounded to said James Long, the Defendant in the Foregoing Bill Named.

1. Did you not make an arrangement with the children of John Milne, as set forth in paragraph two of this bill, or an arrangement similar thereto?

State specifically what same was, and whether you had not made preparation to pay the amount of said defalcation.

If so, then state what you have done with the money which
98 you were to pay to carry out same.

2. Did you not assign a mortgage, dated June 20, 1896, for $15,000, given by A. H. Phillips and wife and Carlton Godfrey and wife to yourself to the fire association by assignment dated March 19, 1897, and recorded March 24, 1897? If so, state what consideration was received from said assignment and what have you done with same.

3. Do you still own a certain mortgage of $2,000 given by Catherine Remington to M. Simpson McCullough, dated August 1, 1883, and recorded August 5, 1883, in Book 14, page 112, etc., and assigned by him to you by assignment dated October 4, 1883, recorded October 5, 1883, in Book 4, page 6, and secured on certain property described thereon at Longport, New Jersey? If you answer no, state when and to whom you assigned same and the consideration received therefor and what disposition you have made of said consideration.

4. State if you did not execute a bond and mortgage to Sarah Long for $20,000, same being dated May 26, 1887, and recorded in Philadelphia County Mortgage Book G. G. P. No. 232, page 62, etc.; also a bond and mortgage to Sarah Long for $30,000, dated September 23, 1887, and also recorded in Philadelphia county in Mortgage Book G. G. P. No. 255, page 389, etc., the consideration or large part of it you allege to be moneys due your daughters, Sarah Long
99 and Jane N. Bonbright, as legacies under the will of one Thomas G. Duncan, of which estate you were the acting executor, and which money you said you never paid to them? If you answer aye, then state if you did not file your account as executor of said estate in the orphans' court of Philadelphia county to November, 1876, No. 144, and in said account did you not claim credit for the following payments:

1874.		
June 30th.	By cash paid James Long's daughters' legatee..	$5,000
July 21st.	By cash, James Long's daughters' legatee, $15,000, less tax.....	14,250

Is not said Sarah Long, the mortgagee above mentioned, and Jane N. Bonbright your daughters, to whom you allege you made said payments? If so, then say whether you did in fact pay them said legacy, as sworn to in your account.

5. Did you not make a conveyance by assignment dated June 10, 1887, to Richard Y. Cook, as trustee for your daughters, Sarah Long and Jane Nelson Bonbright, of a bond and mortgage bearing date June 22, 1882, to secure $150,000, given by M. Simpson McCullough to you, secured on certain property in Longport, N. J.? If so, state the consideration received for said assignment and what disposition you have made of said consideration. If you say same was a gift to your daughters, said Jarah Long and Jane
100 Nelson Bonbright, then give a statement of what you owned at time of said gift and also your liabilities at said time.

No. 6. Do you own real estate in the United States? And if you answer aye, state where the same is situated, the metes, bounds, and extent thereof, and in whose name is the title thereto and the incumbrances against same.

No. 7. Have you any rights or interests, alone or conjointly with others, either equitable or legal, in any real estate or any claim against any real estate or proceeds of real estate in the nature of a charge or lien upon the same, or by the way of remainder therein, or of equity of redemption, or as mortgagee, or as tenant for life of

years, or as lessor, or in any manner otherwise? If you answer aye to one, any, or all of these inquiries, state fully the nature and quantity of your rights, interests, or claims; the situation, metes, bounds, and extent of the said real estate, and in whose name is the title thereto; how your rights, interests, and claims are vested in or secured to you; what is your annual money return therefrom, and whether you are solely or one of two or more owners jointly.

No. 8. Where do you now reside? Have you any interest or right, legal or equitable, in and to the house and lot where you now reside? If aye, state the same fully and in detail.

101 No. 9. Are you in receipt of income? If you answer aye, state how the said income is derived to you, its amount per annum, the times at which and where it becomes payable, and what person or persons is or are liable to you for the same, as well as who directly pays over the same to you.

No. 10. Are you entitled to an annuity? If you answer aye, state the amount of, and when, where, and from what you receive the same.

No. 11. Do you own choses in action or personal property? If you answer aye, describe the same fully, state where the same now is, in whose custody or control, and what is the extent of your interest therein.

No. 12. Have you in your own right moneys which you have or which are placed out at interest or invested in stocks, bonds, loans, or evidences of indebtedness of any person or company, incorporated or otherwise, from which you are entitled to or may derive income or other return? If you answer aye, state what money you have, and describe the said stocks, bonds, loans, or evidence of indebtedness, with the names and residences of the persons liable to you on account of the same, the times when and the place where the income derived therefrom is payable, and what is the extent of the said income.

102 No. 13. Have you any goods, chattels, furniture, desks, tables, instruments, books, letters patents, pictures, maps, money, rights, credits, claims, property, stock in or claim upon or present right to money now or in the future from any person or persons or corporation, and choses in action other than such as you have described in answer to the foregoing interrogatories? If you answer aye, state what and where the same now are, and describe the same fully.

No. 14. Have you at any time within the past, within a year from this time or any time, assigned or conveyed any property, real or personal, to any one without valuable consideration? If you answer aye, state what was assigned, to whom the assignment was made, what the said property was, and where the same now is.

No. 15. Have you any money in possession of any person or any money on deposit, or any interest in any money on deposit in any bank, banker's banking institution, trust company, or savings fund, either in your own name or the name of any other person or persons? If you answer aye, state in whose hands the same is, the amount thereof, and in whose name same is.

No. 16. Did you not receive on November 3, 1897, from the Chestnut Street national bank their due bill for $2,444.32 and collect the same in cash? If so, have you still same or part
103 thereof in your possession? If you answer no, what disposition have you made of same?

No. 17. Did you not receive from Chestnut Street national bank between December, 1896, and last of April, 1897, 58 shares of stock of Eighth national bank, which had been deposited with them as collateral, and which they returned to you? If aye, state if you still own same. If you do not, state if you have sold same. If so, when and for what price and what disposition have you made of said proceeds? If you have not sold said stock, what disposition have you made of same?

Endorsement: No. 604, June term, 1897, common pleas No. 4. Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under will of Benjamin Milnes, deceased, *vs.* James Long. Bill for discovery in aid of execution, with interrogatories. Let *sci. fa.* issue, ret'ble 1st Monday Jan'y, 1898. Chas. Y. Audenried, judge. Alfred D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. Filed Dec. 7, 1897. Jas. W. Fletcher, pro proth'y.

COMMONWEALTH *ex Rel.*
v.
JAMES LONG. } C. P. 4, June Term, 1897. No. 607.

Enter my appearance for Olive Long.

JOSEPH H. TOULANE.

Endorsement: 604, June T., 1897, C. P. 4. Commonwealth *v.* James Long. Appearance for Olive Long. Filed Dec. 27, 1897. J. Briggs, pro proth'y, per H. Toulane.

104 COMMONWEALTH OF PENNA., to Use, &c.,
vs.
LONG, Def't; CHESTNUT ST. NAT'L B'K, Garnishee. } C. P. No. 4, J., '97. 604.

Enter rule for judg't against Chestnut Street National Bank, garnishee, on its answers.

A. D. WILER.
CRAWFORD, LOUGHLIN & DALLAS.

To proth'y C. P.

Endorsement: C. P. 4. 604, June T., 1897. Commonwealth of Penna. *v.* Long, def't; Chestnut St. Nat'l B'k, garnishee. Rule for judg't against garnishee on answer. Filed Dec. 15, 1897. C. H. W., pro proth'y. A. D. Wiler, Crawford, Loughlin & Dallas.

In the Court of Common Pleas No. 4 of Philadelphia County, of June Term, 1897. In Equity.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustees for Mary Rodgers under the Will of Benjamin Milnes, Deceased, *vs.* JAMES LONG. } No. 604.

The Answer of James Long to the Bill of Complaint in the Above Case.

105 To the honorable the judges of said court:

I, the defendant, James Long, saving and reserving to myself all and all manner of exceptions to the manifold errors in the bill contained, for answer thereto or to such parts thereof as I am advised it is material and necessary for me to answer, say:

First. I admit the facts to be as alleged in the first, third, fourth, and eighth paragraphs of complainant's bill, and for further answer thereto I refer to my answers to the interrogatories in said bill, which said answers are hereto annexed.

Second. I admit the allegation in the second paragraph of plaintiff's bill, that his judgment, court of common pleas, No. 4, of June term, 1897, No. 604, was obtained on a bond bearing date September 14th, 1875, given by me for the faithful performance by John Milnes of his duties as trustee of the estate of Benjamin Milnes, deceased; but I deny that I made any arrangement with said Milnes or any of his children or with any person whatever to pay the defalcation of said John Milnes.

That an arrangement with the children of said Milnes was proposed and talked of, whereby they were to assign over certain interests which they had in their mother's estate in settlement
106 of their father's defalcation in order to protect their father from the consequences of said defalcation, but said arrangement was never acted on by reason of the death of said John Milnes and the refusal of his children to carry it out, and for further answer I refer to my answer to plaintiff's first interrogatory.

Third. That the facts set forth in fifth paragraph of plaintiff's bill are as alleged, but that the legacies referred to and for which credit was claimed in my account filed as executor of Thomas G. Duncan's estate, in the orphans' court, as of November, 1876, No. 144, were never in fact paid to my daughters, the legatees, in the sense of said legacies passing into the personal possession of my said daughters; that the payment intended and alleged consisted in the transfer of the amount of said legacies from my custody as executor to my custody as the agent, trustee, or representative of my said daughters, and I continued to hold the said legacies for and on account of my daughters and was indebted to them for the whole amount thereof, with interest, at the time the said mortgages were created.

Fourth. That I did assign a bond and mortgage given by M. Simpson McCullough to me to secure the sum of $150,000 on real estate in Longport, N. J.; that said assignment was made by me to
Richard Y. Cook, trustee for my daughters, Sarah Long and
107 Jane N. Bonbright, and for the consideration and under the circumstances set forth in my answer to plaintiff's fifth interrogatory annexed hereto.

Fifth. To the seventh paragraph of plaintiff's bill I answer that at the time I made the assignment of the said mortgage of M. Simpson McCullough for $150,000 to Richard Y. Cook in trust I was not aware that I was liable on the bond of John Milnes, having totally forgotten that I had ever executed said bond, and being, moreover, under the impression that the estate of Benjamin Milnes had been long before settled and distributed; and I further answer and say that I did not know and had no knowledge, information, or belief that John Milnes was insolvent; that I did at various times, as a matter of friendship, indorse some notes by way of accommodation to said John Milnes, but that I did so believing him amply able to take care of and protect the same, and that otherwise I certainly should not have made the indorsement. I am unable to state on knowledge, information, or belief whether said notes with my indorsements or any of them were outstanding and unpaid in 1887, when the assignment of said $150,000 mortgage was made; but I can and do answer that at that time I was possessed of property in my own right sufficient to pay all my liabilities, direct and contingent, including the claim on this bond, and to leave a surplus of
over $200,000; and for further answer he refers to his answer
108 to the plaintiff's fifth interrogatory.

Sixth. To the eighth paragraph of plaintiff's bill: I did assign the mortgage given by A. H. Phillips for $15,000 to the fire association March 19th, 1897, and that the consideration received therefor was the sum of $15,000, the face value of said mortgage, and that I paid the sum so received to Richard Y. Cook, trustee, on account of arrears of interest due him on two certain bonds and mortgages for $20,000 and $30,000 respectively, being the same referred to in third and fourth paragraphs of plaintiff's bill.

Also that on April 1st, 1897, he assigned to E. B. Smith & Co. twenty-nine shares capital stock of the Huntingdon and Broad Top Railroad Company to the order of E. B. Smith & Co.

Seventh. To the ninth and tenth paragraphs of plaintiff's bill I answer that I have never made any concealment, fraudulent or otherwise, of any of my property, real or personal, and that I have in my answers to the interrogatories to plaintiff's bill hereto annexed made a full disclosure of all my assets and liabilities, so far as I have knowledge, information, recollection, or belief as to the same.

And I pray to be hence dismissed with my reasonable costs incurred in the premises.

JAMES LONG.

And I, the said James Long, do answer the interrogatories
109 to said bill of complaint as follows:

1. To the first interrogatory I answer:

That the bond upon which plaintiff's judgment was obtained was given by me for the faithful performance by John Milnes of his duties as trustee of the estate of Benjamin Milnes, deceased, about the twenty-fourth day of September, 1875, as alleged; that I believed at the time said bond was given that said John Milnes was a man of large means, and I gave the matter little thought at the time and it had entirely passed from my recollection when said Milnes, about Feb'y last past, called upon me and in great distress stated that he was being called upon to account as trustee, as aforesaid, and that he had invested the funds in his own business and lost the same, and that he was totally insolvent.

That prior to this communication I had supposed that the Milne-estate had been settled and distributed, and that my responsibility was at an end many years before. I at once placed the matter in the hands of my counsel, White & White, who threatened proceedings against John Milnes, the defaulting trustee, and that soon after I was called upon by Percival Hill, a son-in-law of said Milnes, who stated that in order to protect their father from the consequences of his defalcation the children of John Milnes would assign over, in
settlement of the claim against him, their interest in their
110 mother's estate, which was about equal in amount to the aforesaid defalcation; that as the beneficiaries of the trust were members of said Milnes family, it was understood that this settlement would be entirely satisfactory and no payment by me in cash or otherwise was contemplated, agreed to, or spoken of by me, and no preparation was made by me to make such payment.

The said John Milnes died before any steps to carry out the proposed agreement had been taken, and his children then refused to carry out the arrangement, as stated in plaintiff's bill.

2. To the second interrogatory:

I did sell and assign the mortgage referred to in said interrogatory as therein stated. I received as the consideration for said sale and assignment the sum of $15,000, being the face of said mortgage, and I handed the same to Richard Y. Cook, trustee for my daughters, Sarah Long and Jane N. Bonbright, as a payment on account of arrears of interest due on two certain bonds and mortgages for $20,000 and $30,000 respectively, being the same referred to in plaintiff's fourth interrogatory.

3. To the third interrogatory:

That the $2,000 mortgage of Catharine Remington to M. Simpson McCullough, in this interrogatory referred to, was paid off several
years ago; that the amount thereof was received by me and
111 was mixed with my other funds, and that I am unable at this time to state specifically from knowledge, information, or belief how the money was used, further than that it was spent in the payment of debts and living expenses.

4. To the fourth interrogatory:

That I did execute the bonds and mortgages to Sarah Long in

said interrogatory referred to, and the consideration therefor was as therein stated.

That it appears by my account as executor of the estate of said Thomas G. Duncan that I claimed credit therein for payment to my daughters, Sarah Long and Jane N. Bonbright, as in the said interrogatory alleged.

That said payments were only constructively made at that time to my said daughters, and this by transferring the amounts thereof from my account as executor to my individual account for and on behalf of my said daughters. Said sums remained in my hands in trust for them, and no part of them was ever paid over to my said daughters, nor either of them, prior to the giving of the said bond and mortgage.

5. To the fifth interrogatory:

I did make an assignment, dated June 10th, 1887, to Richard Y. Cook, as trustee for my daughters, Sarah Long and Jane Nelson Bonbright, of a bond and mortgage given by M. Simpson McCullough, bearing date June 22d, 1882, for $150,000, secured on
112 property in Longport, N. J., and said assignment was made in consideration of the love and affection which I bore to my said daughters, and under the following circumstances:

I had, as a favor to one James Hunter, a lifelong friend, and without consideration of any kind, given his firm accommodation notes on which at the time of the failure of said firm I was liable to the amount of about $50,000, which I was obliged to pay.

In addition to this, I found that said Hunter had forged my name to over $300,000 of paper purporting to be made by me and payable to said Hunter's firm.

A number of suits were brought against me upon said forged paper; and although whenever called upon I was able to and did successfully defend said suits and established the fact that the paper was forged, I was nevertheless so impressed with the risk which I had run and with my own folly in placing so much confidence in one who proved so unworthy that I deemed it my duty, while amply able to do so, to make a provision for my children which could not be taken from them, and with this view I created the trust for their benefit.

The value of the Longport property was in a great degree speculative at that time, as it consisted of sea-beach land in course of development, and the mortgage was payable out of the pro-
113 ceeds of lots sold only. One hundred thousand dollars would have been a fair estimate for the value of the mortgage at the time of its assignment to Mr. Cook as trustee, and at the time of said assignment I had retired from business, and, to the best of my knowledge, information, and belief, I was worth, over and above all liabilities, at least $300,000.

My assets at that time, so far as I can now state them, were as follows:

Cash in bank	$7,119.27
Money in hands of James Long & Bro	46,500.00
Shares Eighth national bank, value	27,000.00

	Shares United Gas Company stock	16,000.00
	Shares Union Trust Company stock	12,600.00
	Real estate, Sea Girt, N. J.	10,900.00
	Real estate, Huntingdon and Broad Top	4,647.50
	Huntingdon and Broad Top bonds and stock	46,000.00
	Water right, Black Hills, S. D.	5,000.00
	Krotophone stock	30,000.00
	Mortgages on Longport property, New Jersey	23,100.00
	House on Longport property, New Jersey	30,000.00
	Real estate, George's hill, Philadelphia	115,000.00
	Glamorgan Iron Company stock	30,000.00
	Real estate, Richmond street, Philadelphia	4,600.00
	Continental Hotel Company stock	420.00
	Mill, Second and Oxford, Philadelphia	40,000.00
114	House No. 1529 Girard avenue, Philadelphia	15,000.00
	Stable and houses, Walker street, Philada	4,100.00
	Real estate, Florida, Brevard county	8,000.00
	Undivided interest in McCauley Mountain land, Pennsylvania	25,000.00
	Real estate in Virginia, Smyth county	100,000.00

My only liabilities beside that on plaintiff's bond at that time, to the best of my knowledge, information, and belief, were:

First. A primary liability on a certain bond and mortgage secured on property on George's hill, $69,000.

A secondary liability as accommodation indorser on certain promissory notes, amounting, I think, to about $200,000, made by the Glamorgan Iron Company and indorsed by the directors of said company for its accommodation. The other indorsers were Ario Pardee & Co., Wigton, Percival Roberts, all men of large means, and our liability as between ourselves was *pro rata*, my share being, to the best of my remembrance, knowledge, information, and belief, about $50,000 at the time of the making of said trust.

A bond and mortgage on dwelling-house No. 1529 Girard avenue for $4,700; due Eighth national bank for borrowed money, $28,000; due on accommodation notes given to J. & J. Hunter, $10,100.

115 6. To the sixth interrogatory:

I own no real estate the title to which is not in myself and of record, where the plaintiff can find all the information inquired of, and he is advised, believes, and submits that he is not called upon to make further answer to this interrogatory.

7. To the seventh interrogatory:

I have no rights alone or conjointly with others, either legal or equitable, in any real estate which is not in my own name and appearing of record, with the exception of a one-third interest in a tract of land in Venango county, standing, to the best of my knowledge and belief, in the name of George Burnham and Charles Baird. I have neither knowledge, information, nor belief which would enable me to more definitely locate said last-mentioned tract of land, and I have no title papers and no writing in relation to my title to the same. The land was sold at sheriff's sale and bought in

by said Burnham and Baird, and they promised verbally to give me one-third of the proceeds when it was sold, and my right depends on said promise.

I have no other claim, to the best of my remembrance, knowledge information, or belief, on any real estate in the nature of a charge or lien, or by way of remainder or equity of redemption, or
116 as mortgage, or as tenant for life or years, or as lessor or otherwise, save as above stated.

8. To the eighth interrogatory:

I reside at Bryn Mawr. I have no interest or right, legal or equitable, in or to the house or lot in which I reside, save as tenant.

9. To the ninth interrogatory:

I am not in receipt of any income nor entitled to any that I know of. Prior to the sale by the sheriff of my mill property at Second and Oxford some months ago I had a small income from it, but since that sale was made I am totally without income or means of support.

10. To the tenth interrogatory:

I am not entitled to any annuity.

11. To the eleventh interrogatory:

I own no choses in action or personal property save my wearing apparel and a few personal articles, not exceeding in all $300 in value.

12. To the twelfth interrogatory:

I have no moneys at interest or invested in stocks, bonds, loans, or evidences of indebtedness of any person or company, incorporated or otherwise.

117 13. To the thirteenth interrogatory:

I have no goods, chattels, furniture, desks, tables, instruments, books, letters patent, pictures, maps, money rights, credits, claims, property, stock in or claim upon or present right to money, now or in the future, from any person or persons or corporation, or choses in action other than those above described in answer to eleventh interrogatory.

14. To the fourteenth interrogatory:

I have not within the last year assigned or conveyed any property, real or personal, to any one without valuable consideration.

15. To the fifteenth interrogatory:

I have no money in possession or on deposit, nor any interest in any money on deposit in any bank, bankers, banking institution, trust company, or saving fund in my own name or in the name of any other person or persons.

16. To the sixteenth interrogatory:

I did receive on November 3d, 1897, from the Chestnut Street national bank their due bill for $2,444.32 and collected the same in cash. I have no part of said sum now in my possession.

I have spent the whole of it, partly for living expenses;
118 $576.95 of it for rent due by me and $910.58 for interest due upon a bond and mortgage on my Virginia property held by the estate of Ario Pardee.

17. To the seventeenth interrogatory:

I did receive from the Chestnut Street national bank between December, 1896, and April, 1897, forty-eight shares of the capital stock of the Eighth national bank, which had been deposited with them as collateral for money loaned to me. I do not own any of said stock now. I sold it through Barnes & Loffland for between $263 and $264 per share, and I paid the proceeds to the said Chestnut Street national bank on account of my then indebtedness to them. The bank gave it to me on my request and on my assurance that I would hand them the proceeds, which I did, according to promise.

JAS. LONG.

James Long, being duly affirmed according to law, deposes and says that the allegations of the foregoing answers to the said bill of complaint and to the interrogatories thereto, so far as they are stated as of his own knowledge, are true, and so far as stated upon information and belief he believes them to be true.

JAS. LONG.

Affirmed and subscribed to before me this 29th day of January, A. D. 1898.

[SEAL.] F. EARLE VON LEER,
Notary Public.

119 Endorsement: No. 604, June term, 1897, common pleas, No. 4. Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustees for Mary Rogers under will of Benjamin Milnes, deceased, *vs.* James Long. Answer of James Long to bill of discovery and to interrogatories. Richard P. White, Thomas E. White, attorneys for defendant. Filed Jan. 31, 1898. J. Briggs, pro proth'y.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion, etc., to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased,
vs.
JAMES LONG, Defendant, and THE CHESTNUT Street National Bank, Garnishee, *et al.*

C. P., 4, June Term, 1897. No. 604.

Order for Appearance.

The prothonotary will please enter our appearance for George H. Earle, Jr., receiver of the Chestnut Street National Bank of Philadelphia, Pennsylvania, garnishee.

W. H. ADDICKS,
ASA W. WATERS,
Attorneys for Receiver of Chestnut Street National Bank.

To M. Russell Thayer, Esq., prothonotary C. C. P.

120 Endorsement: C. P., 4, June, 1897. 604. Commonwealth of Pennsylvania, &c., the Commonwealth Title Insurance & Trust Co., &c., *vs.* James Long, defendant, and The Chestnut Street National Bank, garnishee. Order for appearance. Filed May 5, 1898. P. White, pro proth'y. W. H. Addicks, Asa W. Waters, att'ys for receiver Chestnut St. nat'l bk.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion, etc., to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased,
vs.
JAMES LONG, Defendant, and THE CHESTNUT Street National Bank, Garnishee, *et al.*
C. P., 4, June Term, 1897. No. 604.

Suggestion of Record.

Now, to wit, this 5th day of May, 1898, it is suggested of record that George H. Earle, Jr., has been duly appointed by the Comptroller of the Currency of the United States and qualified as receiver for The Chestnut Street National Bank of Philadelphia, Pennsylvania, garnishee.

W. H. ADDICKS,
ASA W. WATERS,
Attorneys for the Receiver of the Chestnut Street National Bank.

121 Endorsement: No. 604, J. term, 1897, C. P., 4. The Commonwealth of Pennsylvania, &c., the Commonwealth Title Insurance and Trust Co., etc., *vs.* James Long, defendant, and The Chestnut Street National Bank, garnishee. Suggestion of record. Filed May 5, 1898. P. White, pro proth'y. W. H. Addicks, Asa W. Waters, attorneys for receiver of Chestnut St. national bank.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion, etc., to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased,
vs.
JAMES LONG, Defendant, and THE CHESTNUT Street National Bank, Garnishee, *et al.*
C. P., 4, June Term, 1897. No. 604.

And now, May 2nd, 1898, The Chestnut Street National Bank of Philadelphia, Pennsylvania, by its receiver, George H. Earle, Jr., moves the court to vacate and dismiss the attachment herein against the said Chestnut Street National Bank, garnishee, and in support of said motion files the following reason :

The said court has not jurisdiction in such an action under section 5242 of the Revised Statutes of the United States.

W. H. ADDICKS,
ASA W. WATERS,
Attorneys for the Receiver of The Chestnut Street National Bank, Gar.

122 Endorsement: 604, J., 1897, C. P., 4. Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, *vs.* James Long, defendant, and The Chestnut Street National Bank, garnishee, *et al.* Motion to vacate and dismiss attachment. Filed May 7, 1898. C. H. W. W. H. Addicks, Asa W. Waters, attorneys for the receiver of the Chestnut Street national bank.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased, *vs.* JAMES LONG, Defendant, and THE CHESTNUT Street National Bank, Garnishee, *et al.*	C. P., 4, June Term, 1897. No. 604.

Affidavit.

COMMONWEALTH OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

Before me, the subscriber, a notary public in and for the county and State, personally appeared George H. Earle, Jr., who, being duly affirmed, deposes and says that prior to December 23rd, 1897,

123 The Chestnut Street National Bank of Philadelphia, Pennsylvania, garnishee in the above-entitled action, was duly incorporated and organized under the laws of the United States, and was transacting a banking business, and that on or about the said date it suspended payment of its obligations and become insolvent, and was so declared by the Comptroller of the Curreney of the United States.

That thereafter, to wit, on or about the 29th day of January, 1898, this affiant was duly appointed by the Comptroller of the Currency of the United States, under the laws of the United States, receiver for the said Chestnut Street national bank, and as such, under the direction of the said Comptroller of the Currency, took and now holds possession of the books, records, and assets of every description of said banking association, and is now administering the duties of such trust.

GEORGE H. EARLE, JR.

Affirmed and subscribed before me this 5th day of May, A. D. 1898.

H. G. HART,
Notary Public.

[SEAL.]

Endorsement: No. 604, June, 1897, C. P., No. 4. Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Co., trustee, &c., *vs.* James Long, defendant, and Chestnut Street National Bank, garnishee. Affidavit of George H. Earle, Jr. Filed May 6, 1898. P. H. White, pro proth'y. W. H. Addicks, Asa W. Waters, att'ys for receiver of Chestnut St. nat'l bk.

124 Court of Common Pleas No. 4 of Philadelphia County, June Term, 1897.

THE COMMONWEALTH OF PENNSYLVANIA, to the Use of, etc.,
vs.
JAMES LONG, Defendant, and THE CHESTNUT STREET National Bank, Garnishee. } No. 604.

And now, to wit, May 21st, 1898, upon the hearing of the attachment in the above case and the interrogatories of the plaintiff and the answer of the garnishee thereto, it is adjudged that the above-named garnishee has a deposit in money belonging to the above-named defendant of $2,900, with interest from October 28th, 1897; and also that the said garnishee has 77 shares of "National Gas Trust stock" and 33 shares of the capital stock of the Eighth National Bank of Philadelphia belonging to the said defendant and pledged by him with the said garnishee for payment by him to it of the sum of $17,831, with interest thereon from April 22nd, 1897, and that the plaintiff have execution of any dividends on the said deposit of $2,900, with interest, in common with the other creditors of said garnishee, less $35.00, counsel fee for the said garnishee's counsel, and that if the said garnishee refuse or neglect, on demand by the sheriff, to pay the same, then the same to be levied of the said garnishee according to law, as in the case of a judgment
125 against it for its proper debt, and also that the plaintiff have leave to issue a writ of *fieri facias* against the above-named defendant for the sale of the said 77 shares of "National Gas Trust stock" and 33 shares of the capital stock of the Eighth National Bank of Philadelphia, pledged by the defendant with the garnishee, subject to the garnishee's claim under said pledge of the sum of $17,831, with interest thereon from April 22nd, 1897, or so much thereof as shall be necessary to satisfy the plaintiff's judgment against the defendant in this case, with costs.

By the court:

M. ARNOLD, *P. J.*

Endorsement: 604, June T., 1897, C. P., No. 4. Com'th, to use, &c., *v.* Long, def't, and The Chestnut St. Bk., garnishee. Order and judg't. Finding ag'st The Chestnut St. Nat'l Bk., garnishee. Filed May 21, 1898. C. H. White, pro proth'y.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the will of Benjamin Milnes, Deceased,

vs.

JAMES LONG, Defendant, and the CHESTNUT Street National Bank, Garnishee, *et al.*

C. P., No. 4, June Term, 1897. No. 604.

126 *Rule to Vacate and Dismiss Attachment Surjudgment.*

ARNOLD, *P. J.:*

Judgment was entered against the defendant, James Long, on September 29, 1897, for $31,499, and on October 5, 1897, an attachment surjudgment was issued and served on the Chestnut Street national bank as garnishee.

To interrogatories the bank answered that Long was indebted to it in the sum of $17,831, with interest from April 22, 1897; that on September 20, 1897, it issued a due bill for $2,900, payable only through the clearing-house the day after issue, and delivered same to Long, he having closed his account with the bank. The due bill was not paid through the clearing-house, but on November 3, 1897, which was nearly a month after the service of the attachment, Long surrendered the due bill to the bank to pay interest due on his indebtedness above mentioned, which interest was deducted, and the bank issued a new certificate, dated November 3, 1897, for $2,444.33, and delivered it to Long. This due bill was passed through the clearing-house and paid. The bank answered further that when the writ of attachment was served it held, as collateral security for the indebtedness to it, 77 shares of the stock of the National Gas trust, of the value of $160 per share, and 33 shares of the capital stock of the Eighth national bank, of the value of $264 per share.

The Chestnut Street national bank failed on December 23,
127 1897, and is now in the hands of a receiver, who has entered a rule to vacate and dismiss the attachment against that bank for want of jurisdiction in this court. In support of the rule the receiver relies upon section 5242 of the Revised Statutes of the United States, which is as follows:

All transfers of the notes, bonds, bills of exchange, or other evidences of debt, owing to any national banking association or of deposits to its credit all assignments of mortgages securities on real estate, or of judgments, or decrees in its favor; all deposits of money bullion or other valuable thing for its use or for the use of any of its shareholders or creditors; and all payments of money,

to either made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one paper to another, except in payment of its circulating notes, shall be utterly null and void. No attachment injunction or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county or municipal court.

Were this attachment issued against the bank for a debt due by it, then the claim of the receiver to exemption from such
128 attachment would be valid; but it is not for an indebteness of the bank that an attachment was served on it. The attachment is for an indebtedness by Long, and the purpose of the attachment is not to obtain a judgment for a debt due by the bank, but to inquire and determine whether it has any money or property of Long which is subject to an execution at the suit of his creditors. The purpose of the statute is to prevent one creditor of an insolvent national bank from obtaining a priority over others, and to preserve an equality between its creditors in the distribution of its assets. Therefore it is enacted that no attachment, injunction, or execution shall issue against such association or its property before judgment, such, for instance, as a foreign attachment for a debt due by it. The statute does not prevent suits against a national bank in State courts. All it means is that no liens shall be acquired before judgment by attachment, injunction, or execution before judgment. After judgment an execution may be issued against a national bank the same as against any other defendant. But this is not a suit against the bank. It is a suit now in judgment against Long, and the attachment is an execution against him, with a clause of *scire facias* to warn the bank to show cause why judgment should not be levied of Long's property in the possession of the bank. The bank admits that when the attachment was served it owed Long $2,900 on a clearing-house due bill, which was not paid in the usual
129 course of such due bills; that Long presented the bill to the bank on November 3, 1897, and the bank paid it by giving Long credit for interest due by him and giving him a new bill. This was a month after the attachment had been served upon the bank. The bank had no right to deal with Long as it did. The plaintiff was entitled to that money and to a finding to that effect. Likewise the plaintiff is entitled to a finding that the bank holds the above-mentioned shares of stock subject to its lien for the indebtedness of Long to it, and the plaintiff is entitled to execution against that stock subject to the lien of the bank.

As to the money, we incline to think that as the bank is now insolvent, the plaintiff can recover no more than a dividend, and is not entitled to any priority over the other creditors of the bank. As to the stock, the plaintiff is entitled to a *fi. fa.* to sell that subject to the claim of the bank.

The foregoing reasoning has the support of a decision of the court of appeals of New York, which held that sec. 5242 of the Revised Statutes of the United States does not prohibit the issue of an attach-

ment, injunction, or execution against an insolvent national bank for property of a third person in the custody of the bank.
130 Corn Exchange Bank *v.* Blye, 101 N. Y., 303.
Rule discharged.

ASA W. WATERS, *For Rule.*
A. D. WILER,
GEORGE L. CRAWFORD, *Contra.*

Endorsement: No. 604, June T., 1897, C. P., No. 4. Comm., to use, *v.* Chestnut Street Nat'l Bank. Opinion by Arnold, P. J. Filed May 21, 1898. C. H. W., pro proth'y.

131 COMMONWEALTH OF PENNSYLVANIA, to the Use, &c., *vs.* JAMES LONG, Defendant, and CHESTNUT Street National Bank, Garnishee. } C. P., No. 4, June Term, 1897. No. 604.

Issue *fi. fa.* to sell the right, title, and interest of defendant, James Long, in 77 shares National Gas Trust stock and 33 shares capital stock of Eighth national bank, subject to claim of Chestnut Street National Bank, garnishee, of $17,831, with interest thereon.

A. D. WILER.
CRAWFORD, LOUGHLIN & DALLAS.

To proth'y of C. P.

Endorsement: C. P., No. 4, 604, June T., 1897. Commonwealth of Pa., &c., *v.* James Long, d'f't; Chestnut St. Nat'l Bk., gar. Præcipe for *fi. fa.* to sell interest of James Long, def't, in stock in hands of garnishees. Filed May 27, 1898. Hunter, pro proth'y. A. D. Wiler, Crawford, Loughlin & Dallas.

EASTERN DISTRICT OF PENNSYLVANIA, *City and County of Philadelphia,* } *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the justices of the court of common pleas, No. 4, for the county of Philadelphia, Greeting:

We, being willing for certain causes to be certified of the
132 matter of the appeal of The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of Chestnut Street national bank, from judgment of said court against The Chestnut Street National Bank, garnishee, in a certain action in said court of June term, 1897, No. 604, wherein The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under will of Benj. Milnes, dec'd, is plaintiff and James Long, defendant, and The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of the Chestnut Street national bank, are garnishees, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching

the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, the first Monday of January next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable James P. Sterrett, doctor of laws, chief justice of our said supreme court, at Philadelphia, the fourth day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

CHAS. S. GREENE,
Prothonotary.

133 Endorsement.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

M. ARNOLD. [L. S.]
CHAS. Y. AUDENRIED. [L. S.]

Endorsement: C. P., No. 4, 604, June term, 1897. No. 222, January term, 1898, supreme court. The Commonwealth of Penna., at the suggestion of the Commonwealth Title, etc., trustees, *vs.* James Long, defendant, and The Chestnut St. Nat. Bk., trustee. Certiorari to the court of common pleas, No. 4, for the county of Philadelphia, returnable the first Monday of January, 1899. Rule on the appellee to appear and plead on the return day of the writ. June 4, 1898, bro't into office. C. B. W. Filed Jun- 28, 1898, in supreme court. Asa W. Waters. W. H. Addicks.

134 In the Supreme Court of Pennsylvania, Sitting at Philadelphia, January Term, 1898.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased, Appellee,

vs.

JAMES LONG, Defendant, and THE CHESTNUT STREET National Bank and George H. Earle, Jr., as Receiver of the Chestnut Street National Bank, Garnishees, Appellants.

No. 222.

Assignments of Error upon Behalf of Appellants.

The appellant George H. Earle, Jr., as receiver of the Chestnut Street national bank, and upon behalf of said bank, against which the writ of attachment surjudgment was issued (in manner and form as set forth) and served in the proceedings before the learned court

below, assigns as an error of that court its judgment and findings against The Chestnut Street National Bank, entered May 21st, 1898, in which it made absolute the rule of plaintiff filed December 15th, 1897, for judgment upon the answers of The Chestnut Street National Bank, garnishee, and in which it discharged the rule (motion)
135 filed May 7th, 1898, of George H. Earle, Jr., as receiver, and upon behalf of said The Chestnut Street National Bank, "to vacate and dismiss the attachment" against said The Chestnut Street National Bank, for the reason that said learned court below had not jurisdiction of the remedy by attachment against said national bank or any national banking association under section 5242 of the Revised Statutes of the United States then in full force and effect.

ASA W. WATERS,
WILLIAM H. ADDICKS,
Attorneys for Appellants.

Endorsement: No. 222, January term, 1898, in the supreme court of Pennsylvania, sitting at Philadelphia. The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, appellee, *vs.* James Long, defendant, and The Chestnut Street National Bank and George H. Earle, Jr., as receiver of the Chestnut Street National Bank, garnishees, appellants. Filed Jan. 2, 1899, in supreme court. Assignments of error upon behalf of appellants. Asa W. Waters, W. H. Addicks, attorneys for appellants.

COMMONWEALTH, to Use, &c., *v.* CHESTNUT STREET NAT'L BANK *et al.*, Ap'ts. } C. P., No. 4, Philadelphia, No. 222, Jan. Term, 1898.

Filed Jan. 30, 1899.

Per curiam:

The judgment is affirmed on the opinion of the learned
136 president of the court below.

STATE OF PENNSYLVANIA, *Eastern District,* } *ss:*

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do hereby certify that the above and foregoing is a true copy of the opinion in the above-entitled cause so full and entire as appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Philadelphia, this 9th day of February, A. D. 1899.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

137 UNITED STATES OF AMERICA, } ss:
State of Pennsylvania, }

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, eastern district, do hereby certify that the foregoing record, pages 1 to 136, inclusive, is a true and faithful copy of the proceedings of the supreme court of the State of Pennsylvania, eastern district, in a certain suit therein pending, wherein The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of the Chestnut Street national bank, were appellants and The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustees for Mary Rodgers under the will of Benjamin Milnes, deceased, were appellees.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court of the State of Pennsylvania, eastern district, at Philadelphia, the 9th day of February, 1899, and in the one hundred and twenty-third year of the Independence of the United States.

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.

CHAS. S. GREENE,
Prothonotary of the Supreme Court of Pennsylvania, Eastern District.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

138 I, James P. Sterrett, chief justice of the supreme court of Pennsylvania, do hereby certify that Charles S. Greene was at the time of signing the annexed attestation and now is prothonotary of the said supreme court of Pennsylvania in and for the eastern district, to whose acts as such full faith and credit are and ought to be given, and that the said attestation is in due form.

In witness whereof I have hereunto subscribed my name this ninth day of February, one thousand eight hundred and ninety-nine.

JAMES P. STERRETT,
Chief Justice Supreme Court, &c.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do certify that the Honorable James P. Sterrett, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now chief justice of the supreme court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania in and for the

eastern district, at Philadelphia, this ninth day of February, one thousand eight hundred and ninety-nine.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

139 UNITED STATES OF AMERICA, *ss*:

To the Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein George H. Earle, Jr., receiver of the Chestnut Street national bank, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United Sates, this 8th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

Service of above citation on February 9, 1899, is admitted and accepted.

ALFRED D. WILER,
Att'y for Commonwealth of Pennsylvania, to Use, &c.

Endorsed on cover: File No., 17,306. Pennsylvania supreme court. Term No., 218. George H. Earle, Jr., receiver of the Chestnut Street national bank, plaintiff in error, *vs.* The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance & Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased. Filed February 20th, 1899.